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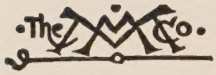

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THE STATE AND THE CHURCH

WRITTEN AND EDITED FOR

THE DEPARTMENT OF SOCIAL ACTION OF THE NATIONAL CATHOLIC WELFARE COUNCIL

BY

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AND

MOORHOUSE F. X. MILLAR, S.J.

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SOCIAL ACTION SERIES

This series will comprise several volumes presenting the Catholic teaching on the important social and industrial problems of the day. The following are now ready: "The Church and Labor," by Rev. John A. Ryan and Rev. Joseph Husslein, S.J.; "The Social Mission of Charity," by Rev. William J. Kerby; "The State and the Church," by Rev. John A. Ryan and Rev. Moorhouse, F. X. Millar, S.J. Other volumes will be published from time to time, according as the need for them becomes manifest and competent writers can be obtained to prepare them.

PREFACE

This work endeavors to set forth the teaching of the Catholic Church concerning the State. In the first chapter will be found the most authoritative doctrine that we possess regarding the nature, authority, and object of the State, and the relations that should subsist between the State and the Church. Practically all the rest of the book is devoted to the development and specific application of these general principles. The second chapter discusses certain declarations of the first which have been the subject of more or less controversy. Chapters III and IV present a comprehensive treatment and defense of the doctrine that governments and rulers derive their moral authority from God through the people. The development of this doctrine in Catholic political theory, and its bearing upon modern democratic theory, are treated at length in the next three chapters. It is believed that these three chapters constitute a distinct contribution to the history of American political principles. The remaining chapters deal mainly with the purpose and scope of the State and the ethical relations existing between it and the citizen.

We have attempted to furnish a substantially adequate discussion of all the religious and moral aspects of the State. We have tried to answer the following and kindred questions: What is the State? What is its relation to the Church? What is the ethical basis of government? Whence do civil rulers obtain their moral right to rule? Do governments "derive their just powers from the consent of the governed?" Is the genesis of American democratic principles to be found in the rationalistic philosophy of eighteenth century France, or in the traditional teaching of Christianity? Does the individual exist for the State, or the State for the individual? Should the State be merely a limited policeman? or a universal provider of every

good thing? or something between these extremes? Are the ordinances of the State merely civic counsels with the intermittent sanction of physical force, or are they true moral laws? What are the duties and what are the rights of the individual citizen? What is the normal Catholic attitude toward the American State and American political institutions? What is the rational meaning of patriotism? What manner of spirit must animate the nations if they would restore and preserve international peace?

The general importance and the peculiar timeliness of these questions need no elaboration of statement. Whenever possible, the answers have been drawn directly from the teaching of Popes, Bishops, and theologians. When these sources did not provide sufficiently specific answers, we have had recourse to lesser authorities, or have made our own interpretation and application of the traditional and authoritative doctrine.

January 6, 1922.

JOHN A. RYAN.
MOORHOUSE F. X. MILLAR, S.J.

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STATE AND CHURCH

1. THE CHRISTIAN CONSTITUTION OF STATES

Encyclical Letter *Immortale Dei,* November 1, 1885

By Pope Leo XIII

The Catholic Church, that imperishable handiwork of our all-merciful God, has for her immediate and natural purpose saving souls and securing our happiness in Heaven. Yet in regard to things temporal she is the source of benefits as manifold and great as if the chief end of her existence were to ensure the prospering of our earthly life. And in truth, wherever the Church has set her foot, she has straightway changed the face of things, and has attempered the moral tone of the people with a new civilization, and with virtues before unknown. All nations which have yielded to her sway have become eminent for their culture, their sense of justice, and the glory of their high deeds.

And yet a hackneyed reproach of old date is levelled against her, that the Church is opposed to the rightful aims of the civil government, and is wholly unable to afford help in spreading that welfare and progress which justly and naturally are sought after by every well-regulated State. From the very beginning Christians were harassed by slanderous accusations of this nature, and on that account were held up to hatred and execration, for being (so they were called) enemies of the empire. The Christian religion was moreover commonly charged with being the cause of the calamities that so frequently befell the State, whereas, in very truth, just punishment was being awarded to guilty nations by an avenging God. This

odious calumny, with most valid reason, nerved the genius and sharpened the pen of St. Augustine, who, notably in his treatise On the City of God, set forth in so bright a light the worth of Christian wisdom in its relation to the public weal, that he seems not merely to have pleaded the cause of the Christians of his day, but to have refuted for all future times impeachments so grossly contrary to truth. The wicked proneness, however, to levy the like charges and accusations has not been lulled to rest. Many, indeed, are they who have tried to work out a plan of civil society based on doctrines other than those approved by the Catholic Church. Nay, in these latter days a novel scheme of law has begun here and there to gain increase and influence, the outcome, as it is maintained, of an age arrived at full stature, and the result of liberty in evolution. But though endeavors of various kinds have been ventured on, it is clear that no better mode has been devised for building up and ruling the State than that which is the necessary growth of the teachings of the Gospel. We deem it, therefore, of the highest moment, and a strict duty of our Apostolic office, to contrast with the lessons taught by Christ the novel theories now advanced touching the State. By this means We cherish hope that the bright shining of the truth may scatter the mists of error and doubt, so that one and all may see clearly the imperious law of life which they are bound to follow and obey.

It is not difficult to determine what would be the form and character of the State were it governed according to the principles of Christian philosophy. Man's natural instinct moves him to live in civil society, for he cannot, if dwelling apart, provide himself with the necessary requirements of life, nor procure the means of developing his mental and moral faculties. Hence it is divinely ordained that he should lead his life—be it family, social, or civil—with his fellow-men, amongst whom alone his several wants can be adequately supplied. But as no society can hold together unless some one be over all, directing all to strive earnestly for the common good; every civilized community must have a ruling authority, and this authority, no less than society itself, has its source in nature, and has, consequently, God for its author. Hence it follows that all

public power must proceed from God. For God alone is the true and supreme Lord of the world. Everything, without exception, must be subject to Him, and must serve Him, so that whosoever holds the right to govern, holds it from one sole and single source, namely, God, the Sovereign Ruler of all.[1] *There is no power but from God.* (Rom. xiii, 1.)

The right to rule is not necessarily, however, bound up with any special mode of government. It may take this or that form, provided only that it be of a nature to insure the general welfare.[2] But whatever be the nature of the government, rulers must ever bear in mind that God is the paramount ruler of the world, and must set Him before themselves as their exemplar and law in the administration of the State. For, in things visible, God has fashioned secondary causes, in which His divine action can in some wise be discerned, leading up to the end to which the course of the world is ever tending. In like manner in civil society, God has always willed that there should be a ruling authority, and that they who are invested with it should reflect the divine power and providence in some measure over the human race.

They, therefore, who rule should rule with even-handed justice, not as masters, but rather as fathers, for the rule of God over man is most just, and is tempered always with a father's kindness. Government should, moreover, be administered for the well-being of the citizens because they who govern others possess authority solely for the welfare of the State. Furthermore, the civil power must not be subservient to the advantage of any one individual or of some few persons, inasmuch as it was established for the common good of all. But if those who are in authority rule unjustly, if they govern overbearingly or arrogantly, and if their measures prove hurtful to the people, they must remember that the Almighty will one day bring them to account, the more strictly in proportion to the sacredness of their office and pre-eminence of their dignity. *The mighty shall be mightily tormented.* (Wisd. vi, 7.) Then truly will the majesty of the law meet with the dutiful and willing homage

[1] See Ch. II, s. 1.
[2] See Ch. II, s. 2.

of the people, when they are convinced that their rulers hold authority from God, and feel that it is a matter of justice and duty to obey them, and to show them reverence and fealty, united in a love not unlike that which children show their parents. *Let every soul be subject to higher powers.* (Rom. xiii, 1.) To despise legitimate authority, in whomsoever vested, is unlawful, as a rebellion against the Divine will, and whoever resists that, rushes wilfully to destruction. *He that resisteth the power resisteth the ordinance of God, and they that resist, purchase to themselves damnation.* (Ibid. xiii, 2.) To cast aside obedience, and by popular violence to incite to revolt, is therefore treason, not against man only, but against God.

As a consequence, the State, constituted as it is, is clearly bound to act up to the manifold and weighty duties linking it to God, by the public profession of religion.[3] Nature and reason, which command every individual devoutly to worship God in holiness, because we belong to Him and must return to Him since from Him we came, bind also the civil community by a like law. For men living together in society are under the power of God no less than individuals are, and society, not less than individuals, owes gratitude to God, who gave it being and maintains it, and whose ever-bounteous goodness enriches it with countless blessings. Since, then, no one is allowed to be remiss in the service due to God, and since the chief duty of all men is to cling to religion in both its teaching and practice—not such religion as they may have a preference for, but the religion which God enjoins, and which certain and most clear marks show to be the only one true religion—it is a public crime to act as though there were no God. So, too, is it a sin in the State not to have care for religion, as a something beyond its scope, or as of no practical benefit; or out of many forms of religion to adopt that one which chimes in with the fancy; for we are bound absolutely to worship God in that way which He has shown to be His will.[4] All who rule, therefore, should hold in honor the holy name of God, and one of their chief duties must be to favor religion, to protect it, to shield it under

[3] See Ch. II, s. 3.
[4] See Ch. II, s. 4.

the credit and sanction of the laws, and neither to organize nor enact any measure that may compromise its safety. This is the bounden duty of rulers to the people over whom they rule. For one and all are we destined by our birth and adoption to enjoy, when this frail and fleeting life is ended, a supreme and final good in Heaven, and to the attainment of this every endeavor should be directed. Since, then, upon this depends the full and perfect happiness of mankind, the securing of this end should be of all imaginable interests the most urgent. Hence civil society, established for the common welfare, should not only safeguard the well-being of the community, but have also at heart the interests of its individual members, in such mode as not in any way to hinder, but in every manner to render as easy as may be, the possession of that highest and unchangeable good for which all should seek. Wherefore, for this purpose, care must especially be taken to preserve unharmed and unimpeded the religion whereof the practice is the link connecting man with God.

Now, it cannot be difficult to find out which is the true religion, if only it be sought with an earnest and unbiassed mind; for proofs are abundant and striking. We have, for example, the fulfilment of prophecies; miracles in great number; the rapid spread of the faith in the midst of enemies and in face of overwhelming obstacles; the witness of the martyrs, and the like. From all these it is evident that the only true religion is the one established by Jesus Christ Himself, and which He committed to His Church to protect and to propagate.

For the only-begotten Son of God established on earth a society which is called the Church, and to it He handed over the exalted and divine office which He had received from His Father, to be continued through the ages to come. *As the Father hath sent Me, I also send you.* (John xx, 21.) *Behold I am with you all days, even to the consummation of the world.* (Matt. xxviii, 20.) Consequently, as Jesus Christ came into the world that men *might have life and have it more abundantly* (John x, 10.), so also has the Church for its aim and end the eternal salvation of souls, and hence it is so constituted as to open wide its arms to all mankind, unhampered by any limit

of either time or place. *Preach ye the Gospel to every creature.* (Mark xvi, 15.)

Over this mighty multitude God has Himself set rulers with power to govern; and He has willed that one should be the head of all, and the chief and unerring teacher of truth, to whom He has given *the keys of the kingdom of heaven.* (Matt. xvi, 19.) *Feed My lambs, feed my sheep.* (John xxi, 16, 17.) *I have prayed for thee that thy faith fail not.* (Luke xxii, 32.)

This society is made up of men, just as civil society is, and yet is supernatural and spiritual, on account of the end for which it was founded, and of the means by which it aims at attaining that end. Hence it is distinguished and differs from civil society, and what is of highest moment, it is a society chartered as of right divine, perfect in its nature and in its title, to possess in itself and by itself, through the will and loving kindness of its Founder, all needful provision for its maintenance and action. And just as the end at which the Church aims is by far the noblest of ends, so is its authority the most exalted of all authority, nor can it be looked upon as inferior to the civil power, or in any manner dependent upon it.[5]

In very truth Jesus Christ gave to His Apostles unrestrained authority in regard to things sacred, together with the genuine and most true power of making laws as also with the twofold right of judging and of punishing, which flow from that power. *All power is given to Me in heaven and on earth: going therefore teach all nations . . . teaching them to observe all things whatsoever I have commanded you.* (Matt. xxviii, 18–20.) And in another place, *If he will not hear them, tell the Church.* (Matt. xviii, 17.) And again, *In readiness to revenge all disobedience.* (2 Cor. x, 6.) And once more, *That . . . I may not deal more severely according to the power which the Lord hath given me, unto edification and not unto destruction.* (2 Cor. xiii, 10.) Hence it is the Church, and not the State, that is to be man's guide to Heaven. It is to the Church that God has assigned the charge of seeing to, and legislating for, all that concerns religion; of teaching all nations; of spreading the Christian faith as widely as possible; in short, of administer-

[5] See Ch. II, s. 5.

ing freely and without hindrance, in accordance with her own judgment, all matters that fall within its competence.

Now this authority, perfect in itself, and plainly meant to be unfettered, so long assailed by a philosophy that truckles to the State, the Church has never ceased to claim for herself and openly to exercise. The Apostles themselves were the first to uphold it, when, being forbidden by the rulers of the Synagogue to preach the Gospel, they courageously answered, *We must obey God rather than men.* (Acts v, 29.) This same authority the holy Fathers of the Church were always careful to maintain by weighty arguments, according as occasion arose, and the Roman Pontiffs have never shrunk from defending it with unbending constancy. Nay more, princes and all invested with power to rule have themselves approved it, in theory alike and in practice. It cannot be called in question that in the making of treaties, in the transaction of business matters, in sending and receiving Ambassadors, and in the interchange of other kinds of official dealings, they have been wont to treat with the Church as with a supreme and legitimate power. And assuredly all ought to hold that it was not without a singular disposition of God's providence that this power of the Church was provided with a civil sovereignty as the surest safeguard of her independence.[6]

The Almighty, therefore, has appointed the charge of the human race between two powers, the ecclesiastical and the civil, the one being set over divine, the other over human things, Each in its kind is supreme, each has fixed limits within which it is contained, limits which are defined by the nature and special object of the province of each, so that there is, we may say, an orbit traced out within which the action of each is brought into play by its own native right.[7] But inasmuch as each of these two powers has authority over the same subjects, and as it might come to pass that one and the same thing—related differently, but still remaining one and the same thing—might belong to the jurisdiction and determination of both, therefore God, who foresees all things, and who is the author

[6] See Ch. II, s. 6.
[7] See Ch. II, s. 7.

of these two powers, has marked out the course of each in right correlation to the other. *For the powers that are, are ordained of God.* (Rom. xiii, 1.) Were this not so, deplorable contentions and conflicts would often arise, and not infrequently men, like travelers at the meeting of two roads, would hesitate in anxiety and doubt, not knowing what course to follow. Two powers would be commanding contrary things, and it would be a dereliction of duty to disobey either of the two.

But it would be most repugnant to deem thus of the wisdom and goodness of God. Even in physical things, albeit of a lower order, the Almighty has so combined the forces and springs of nature with tempered action and wondrous harmony that no one of them clashes with any other, and all of them most fitly and aptly work together for the great purpose of the universe. There must, accordingly, exist, between these two powers, a certain orderly connection, which may be compared to the union of the soul and body in man. The nature and scope of that connection can be determined only, as We have laid down, by having regard to the nature of each power, and by taking account of the relative excellence and nobleness of their purpose. One of the two has for its proximate and chief object the well-being of this mortal life; the other the everlasting joys of Heaven. Whatever, therefore, in things human is of a sacred character, whatever belongs either of its own nature or by reason of the end to which it is referred, to the salvation of souls, or to the worship of God, is subject to the power and judgment of the Church. Whatever is to be ranged under the civil and political order is rightly subject to the civil authority. Jesus Christ has Himself given command that what is Cæsar's is to be rendered to Cæsar, and that what belongs to God is to be rendered to God.[8]

There are, nevertheless, occasions when another method of concord is available for the sake of peace and liberty: We mean when rulers of the State and the Roman Pontiff come to an understanding touching some special matter. At such times

[8] See Ch. II, s. 8.

the Church gives signal proof of her motherly love by showing the greatest possible kindliness and indulgence.[9]

Such then, as We have briefly pointed out, is the Christian organization of civil society; not rashly or fancifully shaped out, but educed from the highest and truest principles, confirmed by natural reason itself.

In such an organization of the State, there is nothing that can be thought to infringe upon the dignity of rulers, and nothing unbecoming them; nay, so far from degrading the sovereign power in its due rights, it adds to it permanence and lustre. Indeed, when more fully pondered, this mutual co-ordination has a perfection in which all other forms of government are lacking, and from which excellent results would flow, were the several component parts to keep their place and duly discharge the office and work appointed respectively for each. And, doubtless, in the Constitution of the State such as we have described, divine and human things are equitably shared; the rights of citizens assured to them, and fenced round by divine, by natural, and by human law; the duties incumbent on each one being wisely marked out, and their fulfilment fittingly insured. In their uncertain and toilsome journey towards the city made without hands, all see that they have safe guides and helpers on their way, and are conscious that others have charge to protect their persons alike and their possessions, and to obtain or preserve for them everything essential for their present life. Furthermore, domestic society acquires that firmness and solidity so needful to it, from the holiness of marriage, one and indissoluble, wherein the rights and duties of husband and wife are controlled with wise justice and equity; due honor is assured to the woman; the authority of the husband is conformed to the pattern afforded by the authority of God; the power of the father is tempered by a due regard for the dignity of the mother and her offspring; and the best possible provision is made for the guardianship, welfare, and education of the children.

In political affairs, and all matters civil, the laws aim at securing the common good, and are not framed according to

[9] See Ch. II, s. 9.

the delusive caprices and opinions of the mass of the people, but by truth and by justice; the ruling powers are invested with a sacredness more than human, and are withheld from deviating from the path of duty, and from overstepping the bounds of rightful authority; and the obedience of citizens is rendered with a feeling of honor and dignity, since obedience is not the servitude of man to man, but submission to the will of God, exercising His sovereignty through the medium of men. Now, this being recognized as undeniable, it is felt that the high office of rulers should be held in respect; that public authority should be constantly and faithfully obeyed; that no act of sedition should be committed; and that the civic order of the commonwealth should be maintained as sacred.

So, also, as to the duties of each one towards his fellow-men, mutual forbearance, kindliness, generosity, are placed in the ascendant; the man who is at once a citizen and a Christian is not drawn aside by conflicting obligations; and, lastly, the abundant benefits with which the Christian religion, of its very nature, endows even the mortal life of man, are acquired for the community and civil society. And this to such an extent that it may be said in sober truth: "The condition of the commonwealth depends on the religion with which God is worshipped: and between one and the other there exists an intimate and abiding connection." (*Sacr. Imp. ad Cyrillum Alexand. et Episcopos Metrop.* Cfr. Labbe, *Collect. Conc.*, T. iii.)

Admirably, according to his wont, does St. Augustine, in many passages, enlarge upon the potency of these advantages; but nowhere more markedly and to the point than when he addresses the Catholic Church in the following words: "Thou dost teach and train children with much tenderness, young men with much vigor, old men with much gentleness; as the age not of the body alone, but of the mind of each requires. Women thou dost subject to their husbands in chaste and faithful obedience, not for the gratifying of their lust, but for bringing forth children, and for having a share in the family concerns. Thou dost set husbands over their wives, not that they may play false to the weaker sex, but according to the

requirements of sincere affection. Thou dost subject children to their parents in a kind of free service, and dost establish parents over their children with a benign rule."

". . . Thou joinest together, not in society only, but in a sort of brotherhood, citizen with citizen, nation with nation, and the whole race of men, by reminding them of their common parentage. Thou teachest kings to look to the interests of their people, and dost admonish the people to be submissive to their kings. With all care dost thou teach all to whom honor is due, and affection, and reverence, and fear, consolation, and admonition, and exhortation, and discipline, and reproach, and punishment. Thou showest that all these are not equally incumbent on all, but that charity is owing to all, and wrong-doing to none." (*De moribus Eccl. Cathol.* xxx, 63.) And in another place, blaming the false wisdom of certain time-saving philosophers, he observes: "Let those who say that the teachings of Christ is hurtful to the State, produce such armies as the maxims of Jesus have enjoined soldiers to bring into being; such governors of provinces; such husbands and wives; such parents and children; such masters and servants; such kings; such judges, and such payers and collectors of tribute, as the Christian teaching instructs them to become, and then let them dare to say that such teaching is hurtful to the State. Nay, rather will they hesitate to own that this discipline, if duly acted up to, is the very mainstay of the commonwealth?" (*Epist.* 138, al. 5, *ad Marcellinum*, ii, 15.)

There was once a time when States were governed by the principles of Gospel teaching. Then it was that the power and divine virtue of Christian wisdom had diffused itself throughout the laws, institutions, and morals of the people, permeating all ranks and relations of civil society. Then, too, the religion instituted by Jesus Christ, established firmly in befitting dignity, flourished everywhere, by the favor of princes and the legitimate protection of magistrates; and Church and State were happily united in concord and friendly interchange of good offices. The State, constituted in this wise, bore fruits important beyond all expectation, whose remembrance is still, and always will be, in renown, witnessed to as they are by countless proofs

which can never be blotted out or even obscured by any craft of any enemies. Christian Europe has subdued barbarous nations, and changed them from a savage to a civilized condition, from superstition to true worship. It victoriously rolled back the tide of Mohammedan conquest; retained the headship of civilization; stood forth in the front rank as the leader and teacher of all, in every branch of national culture; bestowed on the world the gift of true and many-sided liberty; and most wisely founded very numerous institutions for the solace of human suffering. And if we inquire how it was able to bring about so altered a condition of things, the answer is—Beyond all question, in large measure, through religion; under whose auspices so many great undertakings were set on foot, through whose aid they were brought to completion.

A similar state of things would certainly have continued had the agreement of the two powers been lasting. More important results even might have been justly looked for, had obedience waited upon the authority, teaching, and counsels of the Church, and had this submission been specially marked by greater and more unswerving loyalty. For that should be regarded in the light of an ever-changeless law which Ivo of Chartres wrote to Pope Paschal II: "When kingdom and priesthood are at one, in complete accord, the world is well ruled, and the Church flourishes, and brings forth abundant fruit. But when they are at variance, not only smaller interests prosper not, but even things of greatest moment fall into deplorable decay." (*Epist.* 238.)

Sad it is to call to mind how the harmful and lamentable rage for innovation which rose to a climax in the sixteenth century, threw first of all into confusion the Christian religion, and next, by natural sequence, invaded the precincts of philosophy, whence it spread amongst all classes of society. From this source, as from a fountain-head, burst forth all those later tenets of unbridled license which, in the midst of the terrible upheavals of the last century, were wildly conceived and boldly proclaimed as the principles and foundation of that new jurisprudence which was not merely previously unknown, but was at variance

on many points with not only the Christian, but even with the natural law.

Amongst these principles the main one lays down that as all men are alike by race and nature, so in like manner all are equal in the control of their life; that each one is so far his own master as to be in no sense under the rule of any other individual; that each is free to think on every subject just as he may choose, and to do whatever he may like to do; that no man has any right to rule over other men. In a society grounded upon such maxims, all government is nothing more or less than the will of the people, and the people, being under the power of itself alone, is alone its own ruler. It does choose nevertheless some to whose charge it may commit itself, but in such wise that it makes over to them not the right so much as the business of governing, to be exercised, however, in its name.

The authority of God is passed over in silence, just as if there were no God; or as if He cared nothing for human society; or as if men, whether in their individual capacity or bound together in social relations, owed nothing to God; or as if there could be a government of which the whole origin and power and authority did not reside in God Himself. Thus, as is evident, a State becomes nothing but a multitude, which is its own master and ruler. And since the populace is declared to contain within itself the spring-head of all rights and of all power, it follows that the State does not consider itself bound by any kind of duty towards God. Moreover, it believes that it is not obliged to make public profession of any religion; or to inquire which of the very many religions is the only one true; or to prefer one religion to all the rest; or to show to any form of religion special favor; but, on the contrary, is bound to grant equal rights to every creed, so that public order may not be disturbed by any particular form of religious belief.

And it is a part of this theory that all questions that concern religion are to be referred to private judgment; that every one is to be free to follow whatever religion he prefers, or none at all if he disapprove of all. From this the following consequences logically flow: that the judgment of each one's conscience is independent of all law; that the most unrestrained

opinions may be openly expressed as to the practice or omission of divine worship; and that every one has unbounded license to think whatever he chooses and to publish abroad whatever he thinks.

Now when the State rests on foundations like those just named —and for the time being they are greatly in favor—it readily appears into what and how unrightful a position the Church is driven. For when the management of public business is in harmony with doctrines of such a kind, the Catholic religion is allowed a standing in civil society equal only, or inferior, to societies alien from it; no regard is paid to the laws of the Church, and she who, by the order and commission of Jesus Christ, has the duty of teaching all nations, finds herself forbidden to take any part in the instruction of the people. With reference to matters that are of twofold jurisdiction, they who administer the civil power lay down the law at their own will, and in matters that appertain to religion defiantly put aside the most sacred decrees of the Church. They claim jurisdiction over the marriages of Catholics, even over the bond as well as the unity and the indissolubility of matrimony. They lay hands on the goods of the clergy, contending that the Church cannot possess property. Lastly, they treat the Church with such arrogance that, rejecting entirely her title to the nature and rights of a perfect society, they hold that she differs in no respect from other societies in the State, and for this reason possesses no right nor any legal power of action, save that which she holds by the concession and favor of the government. If in any State the Church retains her own right—and this with the approval of the civil law, owing to an agreement publicly entered into by the two powers—men forthwith begin to cry out that matters affecting the Church must be separated from those of the State.[10]

Their object in uttering this cry is to be able to violate unpunished their plighted faith, and in all things to have unchecked control. And as the Church, unable to abandon her chiefest and most sacred duties, cannot patiently put up with this, and asks that the pledge given to her be fully and scrupu-

[10] See Ch. II, s. 10.

lously acted up to, contentions frequently arise between the ecclesiastical and the civil power, of which the issue commonly is, that the weaker power yields to the one which is stronger in human resources.

Accordingly, it has become the practice and determination under this condition of public polity (now so much admired by many) either to forbid the action of the Church altogether, or to keep her in check and bondage to the State. Public enactments are in great measure framed with this design. The drawing up of laws, the administration of State affairs, the godless education of youth, the spoliation and suppression of religious orders, the overthrow of the temporal power of the Roman Pontiff, all alike aim at this one end—to paralyze the action of Christian institutions, to cramp to the utmost the freedom of the Catholic Church, and to curtail her every single prerogative.

Now, natural reason itself proves convincingly that such concepts of the government of a State are wholly at variance with the truth. Nature itself bears witness that all power, of every kind, has its origin from God, who is its chief and most august source.

The sovereignty of the people, however, and this without any reference to God, is held to reside in the multitude; which is doubtless a doctrine exceedingly well calculated to flatter and to inflame many passions, but which lacks all reasonable proof, and all power of insuring public safety and preserving order. Indeed from the prevalence of this teaching, things have come to such a pass that many hold as an anxiom of civil jurisprudence that seditions may be rightfully fostered. For the opinion prevails that princes are nothing more than delegates chosen to carry out the will of the people; whence it necessarily follows that all things are as changeable as the will of the people, so that risk of public disturbance is ever hanging over our heads.[11]

To hold therefore that there is no difference in matters of religion between forms that are unlike each other, and even contrary to each other, most clearly leads in the end to the

[11] See Ch. II, s. 11.

rejection of all religion in both theory and practice. And this is the same thing as atheism, however it may differ from it in name. Men who really believe in the existence of God must, in order to be consistent with themselves and to avoid absurd conclusions, understand that differing modes of divine worship involving dissimilarity and conflict even on most important points, cannot all be equally probable, equally good, and equally acceptable to God.

So, too, the liberty of thinking, and of publishing, whatsoever each one likes, without any hindrance is not in itself an advantage over which society can wisely rejoice. On the contrary it is the fountain-head and origin of many evils. Liberty is a power perfecting man, and hence should have truth and goodness for its object. But the character of goodness and truth cannot be changed at option. These remain ever one and the same, and are no less unchangeable than Nature herself. If the mind assents to false opinions, and the will chooses and follows after what is wrong, neither can attain its native fulness, but both must fall from their native dignity into an abyss of corruption. Whatever, therefore, is opposed to virtue and truth, may not rightly be brought temptingly before the eye of man, much less sanctioned by the favor and protection of the law.[12] A well-spent life is the only passport to Heaven, whither all are bound, and on this account the State is acting against the laws and dictates of nature whenever it permits the license of opinion and of action to lead minds astray from truth and souls away from the practice of virtue. To exclude the Church, founded by God Himself, from the business of life, from the power of making laws, from the training of youth, from domestic society, is a grave and fatal error. A State from which religion is banished can never be well regulated; and already perhaps more than is desirable is known of the nature and tendency of the so-called civil philosophy of life and morals. The Church of Christ is the true and sole teacher of virtue and guardian of morals. She it is who preserves in their purity the principles from which duties flow, and by setting forth most urgent reasons for virtuous life, bids us not only to

[12] See Ch. II, s. 12.

turn away from wicked deeds, but even to curb all movements of the mind that are opposed to reason, even though they be not carried out in action.

To wish the Church to be subject to the civil power in the exercise of her duty is a great folly and a sheer injustice. Whenever this is the case, order is disturbed, for things natural are put above things supernatural; the many benefits which the Church, if free to act, would confer on society are either prevented or at least lessened in number; and a way is prepared for enmities and contentions between the two powers, with what evil result to both the issue of events has taught us only too frequently.

Doctrines such as these, which cannot be approved by human reason, and most seriously affect the whole civil order, Our predecessors the Roman Pontiffs (well aware of what their apostolic office required of them) have never allowed to pass uncondemned. Thus Gregory XVI in his Encyclical Letter *Mirari vos,* of date August 15, 1832, inveighed with weighty words against the sophisms, which even at his time were being publicly inculcated—namely, that no preference should be shown for any particular form of worship; that it is right for individuals to form their own personal judgments about religion; that each man's conscience is his sole and all-sufficing guide; and that it is lawful for every man to publish his own views, whatever they may be, and even to conspire against the State. On the question of the separation of Church and State the same Pontiff writes as follows: "Nor can We hope for happier results either for religion or for the civil government from the wishes of those who desire that the Church be separated from the State, and the concord between the secular and ecclesiastical authority be dissolved. It is clear that these men, who yearn for a shameless liberty, live in dread of an agreement which has always been fraught with good, and advantageous alike to sacred and civil interests." To the like effect, also, as occasion presented itself, did Pius IX brand publicly many false opinions which were gaining ground, and afterwards ordered them to be condensed in summary form in order that in this sea of error Catholics might have a light which they

might safely follow. It will suffice to indicate a few of them:

Prop. xix: "The Church is not a true, perfect, and wholly independent society, possessing its own unchanging rights conferred upon it by its Divine Founder; but it is for the civil power to determine what are the rights of the Church, and the limits within which it may use them." Prop. xxxix: "The State, as the origin and source of all rights enjoys a right that is unlimited." Prop. lv: "The Church must be separated from the State, and the State from the Church." Prop. lxxix: "It is untrue that the civil liberty of every form of worship, and the full power given to all of openly and publicly manifesting whatsoever opinions and thoughts, lead to the more ready corruption of the minds and morals of the people, and to the spread of the plague of religious indifference."[13]

From these pronouncements of the Popes it is evident that the origin of public power is to be sought for in God Himself, and not in the multitude, and that it is repugnant to reason to allow free scope for sedition. Again, that it is not lawful for the State, any more than for the individual, either to disregard all religious duties or to hold in equal favor different kinds of religion: that the unrestrained freedom of thinking and of openly making known one's thoughts is not inherent in the rights of citizens, and is by no means to be reckoned worthy of favor and support. In like manner it is to be understood that the Church no less than the State itself is a society perfect in its own nature and its own right, and that those who exercise sovereignty ought not so to act as to compel the Church to become subservient or subject to them, or to hamper her liberty in the management of her own affairs, or to despoil her in any way of the other privileges conferred upon her by Jesus Christ. In matters, however, of mixed jurisdiction, it is in the highest degree consonant to nature, as also to the designs of God, that so far from one of the powers separating itself from the other, or still less coming into conflict with it, complete harmony, such as is suited to the end for which each power exists, should be preserved between them.

This then is the teaching of the Catholic Church concerning the constitution and government of the State. By the words

[13] See Ch. II, s. 13.

and decrees just cited, if judged dispassionately, no one of the several forms of government is in itself condemned, inasmuch as none of them contain anything contrary to Catholic doctrine, and all of them are capable, if wisely and justly managed, to insure the welfare of the State. Neither is it blameworthy in itself, in any manner, for the people to have a share, greater or less in the government: for at certain times, and under certain laws, such participation may not only be of benefit to the citizens, but may even be of obligation. Nor is there any reason why any one should accuse the Church of being wanting in gentleness of action or largeness of view, or of being opposed to real and lawful liberty. The Church, indeed, deems it unlawful to place the various forms of divine worship on the same footing as the true religion, but does not, on that account, condemn those rulers who, for the sake of securing some great good or of hindering some great evil, allow patiently custom or usage to be a kind of sanction for each kind of religion having its place in the State.[14] And in fact the Church is wont to take earnest heed that no one shall be forced to embrace the Catholic faith against his will, for, as St. Augustine wisely reminds us, "Man cannot believe otherwise than of his own free will."

In the same way the Church cannot approve of that liberty which begets a contempt of the most sacred laws of God, and casts off the obedience due to lawful authority, for this is not liberty so much as license, and is most correctly styled by St. Augustine the "liberty of self-ruin," and by the Apostle St. Peter *the cloak of malice.* (Peter ii, 16.) Indeed, since it is opposed to reason, it is a true slavery, *for whosoever committeth sin is the slave of sin.* (John viii, 34.) On the other hand, that liberty is truly genuine, and to be sought after, which in regard to the individual does not allow men to be the slaves of error and of passion, the worst of all masters; which, too, in public administration guides the citizens in wisdom and provides for them increased means of well-being; and which, further, protects the State from foreign interference.

[14] See Ch. II, s. 14.

This honorable liberty, alone worthy of human beings, the Church approves most highly and has never slackened her endeavor to preserve, strong and unchanged, among nations. And in truth whatever in the State is of chief avail for the common welfare; whatever has been usefully established to curb the license of rulers who are opposed to the true interests of the people, or to keep in check the leading authorities from unwarrantably interfering in municipal or family affairs—whatever tends to uphold the honor, manhood, and equal rights of individual citizens;—of all these things, as the monuments of past ages bear witness, the Catholic Church has always been the originator, the promoter, or the guardian. Ever therefore consistent with herself, while on the one hand she rejects that exorbitant liberty which in individuals and in nations ends in license or in thraldom, on the other hand, she willingly and most gladly welcomes whatever improvements the age brings forth, if these really secure the prosperity of life here below, which is as it were a stage in the journey to the life that will know no ending.

Therefore, when it is said the Church is jealous of modern political systems, and that she repudiates the discoveries of modern research, the charge is a ridiculous and groundless calumny. Wild opinions she does repudiate, wicked and seditious projects she does condemn, together with that habit of mind which points to the beginning of a wilful departure from God. But as all truth must necessarily proceed from God, the Church recognizes in all truth that is reached by research, a trace of the divine intelligence. And as all truth in the natural order is powerless to destroy belief in the teachings of revelation, but can do much to confirm it, and as every newly discovered truth may serve to further the knowledge or the praise of God, it follows that whatsoever spreads the range of knowledge will always be willingly and even joyfully welcomed by the Church. She will always encourage and promote, as she does in other branches of knowledge, all study occupied with the investigation of nature. In these pursuits, should the human intellect discover anything not known before, the Church makes no opposition. She never objects to search being

made for things that minister to the refinements and comforts of life. So far indeed from opposing these she is now, as she ever has been, hostile alone to indolence and sloth, and earnestly wishes that the talents of men may bear more and more abundant fruit by cultivation and exercise. Moreover she gives encouragement to every kind of art and handicraft, and through her influence, directing all strivings after progress towards virtue and salvation, she labors to prevent man's intellect and industry from turning him away from God and from heavenly things.

All this, though so reasonable and full of counsel, finds little favor nowadays when States not only refuse to conform to the rules of Christian wisdom, but seem even anxious to recede from them further and further on each successive day. Nevertheless, since truth when brought to light is wont, of its own nature, to spread itself far and wide, and gradually take possession of the minds of men, We, moved by the great and holy duty of Our apostolic mission to all nations, speak, as We are bound to do, with freedom. Our eyes are not closed to the spirit of the times. We repudiate not the assured and useful improvements of our age, but devoutly wish affairs of State to take a safer course than they are now taking, and to rest on a more firm foundation without injury to the true freedom of the people; for the best parent and guardian of liberty amongst men is truth. *The truth shall make you free.* (John viii, 32.)

If in the difficult times in which our lot is cast, Catholics will give ear to Us, as it behooves them to do, they will readily see what are the duties of each one in matters of opinion as well as action. As regards opinion, whatever the Roman Pontiffs have hitherto taught, or shall hereafter teach, must be held with a firm grasp of mind, and, so often as occasion requires, must be openly professed.

Especially with reference to the so-called "Liberties" which are so greatly coveted in these days, all must stand by the judgment of the Apostolic See, and have the same mind. Let no man be deceived by the outward appearance of these liberties, but let each one reflect whence these have had their origin, and by what efforts they are everywhere upheld and promoted. Experience has made us well acquainted with their results to the State,

since everywhere they have borne fruits which the good and wise bitterly deplore. If there really exist anywhere, or if we in imagination conceive, a State, waging wanton and tyrannical war against Christianity and if we compare with it the modern form of government just described, this latter may seem the more endurable of the two. Yet, undoubtedly, the principles on which such a government is grounded are, as We have said, of a nature which no one can approve.

Secondly, action may relate to private and domestic matters, or to matter public. As to private affairs, the first duty is to conform life and conduct to the gospel precepts, and to refuse to shrink from this duty when Christian virtue demands some sacrifice difficult to make. All, moreover, are bound to love the Church as their common mother, to obey her laws, promote her honor, defend her rights, and to endeavor to make her respected and loved by those over whom they have authority. It is also of great moment to the public welfare to take a prudent part in the business of municipal administration, and to endeavor above all to introduce effectual measures, so that, as becomes a Christian people, public provision may be made for the instruction of youth in religion and true morality. Upon these things the well-being of every State greatly depends.

Furthermore, it is in general fitting and salutary that Catholics should extend their efforts beyond this restricted sphere, and give their attention to national politics. We say in general, because these Our precepts are addressed to all nations. However, it may in some places be true that, for most urgent and just reasons, it is by no means expedient for Catholics to engage in public affairs or to take an active part in politics. Nevertheless, as We have laid down, to take no share in public matters would be equally as wrong (We speak in general) as not to have concern for, or not to bestow labor upon, the common good. And this all the more because Catholics are admonished, by the very doctrines which they profess, to be upright and faithful in the discharge of duty, while if they hold aloof, men whose principles offer but small guarantee for the welfare of the State will the more readily seize the reins of government. This would tend also to the injury of the

Christian religion, forasmuch as those would come into power who are badly disposed towards the Church, and those who are willing to befriend her would be deprived of all influence.

It follows therefore clearly that Catholics have just reasons for taking part in the conduct of public affairs.[15]

For in so doing they assume not the responsibility of approving what is blameworthy in the actual methods of government, but seek to turn these very methods, so far as possible, to the genuine and true public good, and to use their best endeavors at the same time to infuse, as it were, into all the veins of the State the healthy sap and blood of Christian wisdom and virtue. The morals and ambitions of the heathens differed widely from those of the Gospel, yet Christians were to be seen living undefiled everywhere in the midst of pagan superstition, and, while always true to themselves, coming to the front boldly wherever an opening was presented. Models of loyalty to their rulers, submissive, so far as was permitted, to the sovereign power, they shed around them on every side a halo of sanctity; they strove to be helpful to their brethern, and to attract others to the wisdom of Jesus Christ, yet were bravely ready to withdraw from public life, nay, even to lay down their life, if they could not without loss of virtue retain honors, dignities, and offices. For this reason Christian ways and manners speedily found their way not only into private houses but into the camp, the senate, and even into the imperial palaces. "We are but of yesterday," wrote Tertullian, "yet we swarm in all your institutions, we crowd your cities, islands, villages, towns, assemblies, the army itself, your wards and corporations, the palace, the senate, and the law courts." So that the Christian faith when once it became lawful to make public profession of the Gospel, appeared in most of the cities of Europe, not like an infant crying in its cradle, but already grown up and full of vigor.

In these our days it is well to revive these examples of our forefathers. First and foremost it is the duty of all Catholics worthy of the name and wishful to be known as most loving children of the Church, to reject without swerving whatever

[15] See Ch. II, s. 15.

is inconsistent with so fair a title; to make use of popular institutions, so far as can honestly be done, for the advancement of truth and righteousness; to strive that liberty of action shall not transgress the bounds marked out by nature and the law of God; to endeavor to bring back all civil society to the pattern and form of Christianity which We have described. It is barely possible to lay down any fixed method by which such purposes are to be attained, because the means adopted must suit places and times widely differing from one another. Nevertheless, above all things, unity of aim must be preserved, and similarity must be sought after in all plans of action. Both these objects will be carried into effect without fail if all will follow the guidance of the Apostolic See as their rule of life and obey the bishops whom the Holy Ghost has placed to rule the Church of God. (Acts xx, 28.) The defence of Catholicism, indeed, necessarily demands that in the profession of doctrines taught by the Church all shall be of one mind and all steadfast in believing; and care must be taken never to connive, in any way, at false opinions, never to withstand them less strenously than truth allows. In mere matters of opinion it is permissible to discuss things with moderation, with a desire of searching into the truth, without unjust suspicion or angry recriminations.

Hence, lest concord be broken by rash charges, let this be understood by all, that the integrity of Catholic faith cannot be reconciled with opinions verging on Naturalism or Rationalism, the essence of which is utterly to sterilize Christianity, and to install in society the supremacy of man to the exclusion of God. Further, it is unlawful to follow one line of conduct in private and another in public, respecting privately the authority of the Church, but publicly rejecting it; for this would amount to joining together good and evil, and to putting man in conflict with himself; whereas he ought always to be consistent, and never in the least point nor in any condition of life to swerve from Christian virtue.

But in matters merely political, as for instance the best form of government, and this or that system of administration, a difference of opinion is lawful. Those, therefore, whose piety is in other respects known, and whose minds are ready to accept

in all obedience the decress of the Apostolic See, cannot in justice be accounted as bad men because they disagree as to subjects We have mentioned; and still graver wrong will be done them, if—as We have more than once perceived with regret —they are accused of violating, or of wavering in, the Catholic faith.

Let this be well borne in mind by all who are in the habit of publishing their opinions, and above all by journalists. In the endeavor to secure interests of the highest order there is no room for internal strife or party rivalries; since all should aim with one mind and purpose to make safe that which is the common object of all—the maintenance of Religion and of the State. If, therefore, there have hitherto been dissensions, let them henceforth be gladly buried in oblivion. If rash or injurious acts have been committed, whoever may have been at fault, let mutual charity make amends, and let the past be redeemed by a special submission of all to the Apostolic See.

In this way Catholics will attain two most excellent results: they will become helpers to the Church in preserving and propagating Christian wisdom; and they will confer the greatest benefit on civil society, the safety of which is exceedingly imperilled by evil teachings and bad passions.

This, Venerable Brethren, is what We have thought it Our duty to expound to all nations of the Catholic world touching the Christian constitution of States and the duties of individual citizens.

It behooves Us now with earnest prayer to implore the protection of Heaven, beseeching God, who alone can enlighten the minds of men and move their will, to bring about those happy ends for which We yearn and strive, for His greater glory and the general salvation of mankind. As a happy augury of the divine benefits, and in token of Our paternal benevolence, to you, Venerable Brothers, and to the clergy and to the whole people committed to your charge and vigilance, We grant lovingly in the Lord the Apostolic Benediction.

2. COMMENTS ON THE "CHRISTIAN CONSTITUTION OF STATES"

By Rev. John A. Ryan, D.D.

1. (p. 3) The Moral Authority of Governments

The principle laid down in this paragraph is sometimes confused by ignorant persons with the theory of "the divine right of kings." The resemblance between the two doctrines is entirely superficial. In its logical and best known form, the latter doctrine comes down to us from King James I, of England. He maintained that his right to rule was conferred upon him by God directly and positively. That is to say, God did not bestow that power upon the king because the latter was designated by the people, nor because he was the constitutional heir to the throne, nor on account of any other fact, event, or situation. God selected and gave authority to the King (James I and every other king) by direct and positive action, independently of human wills or institutions, just as he chose and empowered Saul to rule over Israel. (See *The Political Works of James I.* Harvard University Press; 1918.) Hence the king rules by divine right in the complete sense of that phrase. The refutation of this theory, and the statement of the Catholic theory concerning the manner in which moral authority is conferred upon the ruler, are presented in subsequent pages of this volume.

In the paragraph that we are discussing, Pope Leo declares that the authority to rule comes from God, indeed, but points out that it arrives by way of nature. It is not conferred by a divine act of supernatural intervention, as asserted by King James. Ruling authority, divinely sanctioned, comes into existence as a necessary consequence of the nature and end of

human beings. They cannot live right and reasonable lives without civil society; civil society cannot function effectively without a governing authority; therefore, the latter, just like political society itself, is necessary for human welfare, and consequently sanctioned and ratified by the Creator and Governor of the human race. Hence the political ruler has true moral authority to govern, and the citizens or subjects have a moral obligation to obey.

The authority and ordinances of the rulers of a State are quite different from the authority and regulations of the president of a literary society or the leader of a whist club. Civil laws are, generally speaking, binding in conscience, for the simple reason that they proceed from functionaries who hold power from God, "the Sovereign Ruler of all." Since only God has the authority to impose moral obligation upon human beings, political rulers can enact morally obligatory ordinances only because their authority is derived from Him. In this doctrine the authority of the government and the obligations of the governed are placed far above considerations of mere expediency, of arbitrary caprice, or of physical might.[1]

Whether the authority of the political ruler, as thus expounded, may be called a "divine right," is objectively a question of language. In itself the phrase is not inappropriate. Owing, however, to its association with the false and decidedly unpopular theory of James I, it should be avoided and repudi-

[1] "The true remedy for many of the disorders with which we are troubled, is to be found in a clearer understanding of civil authority. Rulers and people alike must be guided by the truth that the State is not merely an invention of human forethought, that its power is not created by human agreement or even by nature's device. Destined as we are by our Maker to live together in social intercourse and mutual co-operation for the fulfilment of our duties, the proper development of our faculties and the adequate satisfaction of our wants, our association can be orderly and prosperous only when the wills of the many are directed by that moral power which we call authority. This is the unifying and co-ordinating principle of the social structure. It has its origin in God alone. In whom it shall be vested and by whom exercised, is determined in various ways, sometimes by the outcome of circumstances and providential events, sometimes by the express will of the people. But the right which it possesses to legislate, to execute and administer, is derived from God himself."—(From the Pastoral Letter of the American Hierarchy, 1920.)

ated by all who reject that theory. Moreover, we must remember that the "divine right" to govern, in the explanation of Pope Leo, attaches quite as truly to the president of a republic as to the head of a monarchy.

The principal concern of Pope Leo in this paragraph is not to show precisely how moral authority is conferred upon a ruler or government, but rather to point out the fact and the nature of that authority. For the right ordering of human life it is necessary that civil society should exist, that government should function, and that governmental ordinances should impose moral obligations. That is all that Pope Leo says concerning the *manner* in which moral authority comes to the ruler. The conditions that are necessary to justify the possession and exercise of political power by any individual or group of individuals,—whether there must be a popular election or some other manifestation of the will of the people, whether certain constitutional forms must be observed, whether the ruler derives his credentials from a happy concatenation of events,—are questions that Pope Leo does not touch in this place. Nor does he assert or imply that every actual ruler is legitimate and therefore possessed of moral authority. He merely assumes the case of a government that is legitimately established, and points out the moral character of its authority. His statements are directed against those who would deny the ethical nature of political power, not against any particular theory of the way in which it legitimately reaches the ruler.

2. (p. 3) Various Forms of Government

Two important principles are contained in the first two sentences of this paragraph. None of the three classical forms of government (monarchy, aristocracy, democracy) nor any of their modifications or combinations, is morally unlawful or unfavorably regarded by the Catholic Church. It is true that many Catholic writers have defended the monarchical as superior to the other forms, but the Church has never officially sanctioned such a view, nor formally expressed a preference for any of the other polities.

The second important principle in this statement of Pope Leo concerns the supreme test of a good form of government. That test is the general welfare. Since this is the end of all government, any form of polity that promotes it in any given circumstance is morally legitimate and reasonable. By implication, therefore, a form of government which is destructive of the general welfare is not legitimate and ought, through lawful means, to be supplanted by some other form which will attain the true end of a political society.

3. (p. 4) Public Profession of Religion by the State

To the present generation this is undoubtedly "a hard saying." The separation of Church and State, which obtains substantially in the majority of countries, is generally understood as forbidding the State to make "a public profession of religion." Nevertheless, the logic of Pope Leo's argument is unassailable. Men are obliged to worship God, not only as individuals, but also as organized groups. Societies have existence and functions over and above the existence and functions of their individual members. Therefore, they are dependent upon God for their corporate existence and functions, and as moral persons owe corporate obedience to His laws, formal recognition of His authority, and appropriate acts of worship. To deny these propositions is to maintain the illogical position that man owes God religious worship under only one aspect of his life, in only one department of his life.

Since the State is by far the most important of the secular societies to which man belongs, its obligation to recognize and profess religion is considerably greater and stricter than is the case with the lesser societies. And the failure of the State to discharge this obligation produces evil results of corresponding gravity. It exhibits in most extensive proportions the destructive power of bad example.[2]

[2] "The State itself should be the first to appreciate the importance of religion for the preservation of the common weal. It can ill afford at any time, and least of all in the present condition of the world, to reject the assistance which Christianity offers for the maintenance of peace and order. 'Let princes and rulers of the people,' says Pope Benedict XV,

The logic of Pope Leo's position receives strong confirmation from the attempts that have been made to enforce consistently the opposite theory. In governments which profess absolute neutrality toward religion, the actual policy is one of hostility. This is shown in a hundred ways (some of them open and some quite subtle) in the recent history of France, and of some of the countries south of the United States. Such a policy is logically defensible on no theory except Atheism. It is conceivable that a State might explicitly adopt the opinion that there is no God, and therefore prohibit divine worship as injurious to the public welfare. The practice of repression would follow logically from the theoretical position. But the persecuting governments to which reference has just been made, have not had the courage, or the hardihood, to support their practical policy by a frank avowal of the corresponding theory. As a consequence, they exhibit a contradiction between theory and practice, and demonstrate the impossibility and unveracity of the theory of neutrality.

The State cannot avoid taking an attitude toward religion. In practice that attitude will necessarily be positive, either for or against. There can be no such actual policy as impartial indifference.

This proposition receives further confirmation from the attitude of those States which refrain from any formal acceptance of religion in theory, and yet accord it some measure of recogni-

'bear this in mind and bethink themselves whether it be wise and salutary, either for public authority or for the nations themselves, to set aside the holy religion of Jesus Christ, in which that very authority may find such powerful support and defense. Let them seriously consider whether it be the part of political wisdom to exclude from the ordinance of the State and from public instruction, the teaching of the Gospel and of the Church. Only too well does experience show that when religion is banished, human authority totters to its fall. That which happened to the first of our race when he failed in his duty to God, usually happens to nations as well. Scarcely had the will in him rebelled against God when the passions arose in rebellion against the will; and likewise, when the rulers of the people disdain the authority of God, the people in turn despise the authority of men. There remains, it is true, the usual expedient of suppressing rebellion by force; but to what effect? Force subdues the bodies of men, not their souls' '' (Encyc., *Ad beatissimi*, November 1, 1914).—From the Pastoral Letter of the American Hierarchy, 1920.

tion in practice. The policy of the United States is the most conspicuous and significant. Our Federal and State constitutions forbid the legal establishment of any form of religion, thereby ensuring the separation of Church and State, and apparently making inevitable a policy of neutrality or indifference. Nevertheless, our Federal and State governments have never adopted such a policy. Their attitude has been one of positive friendliness toward religion. Some of the manifestations and expressions of this policy are: The appointment of an annual day of public thanksgiving by the President of the United States and the Governors of the several States; the employment of chaplains to open with prayer the sessions of the National and State legislatures; the provision of chaplains for the Army and Navy; the exemption of church property from taxation; the general policy of promoting the interests of religion, and many other acts and practices, for example, the recent action of the school board of New York City in placing the school buildings at the disposal of the various denominations for the purpose of giving religious instruction.

These institutions and practices are in fact what Pope Leo calls "a public profession of religion." As compared with the degree of recognition accorded in a formal union of Church and State, they are, indeed, feeble and inconspicuous. Nevertheless, they do exemplify the principle. "The public profession of religion," is susceptible of very many forms and degrees, from the adoption, support, and toleration of only one creed, to the slight manifestations of recognition shown by countries which do not go even as far as the United States.

It is not here contended that the latter kind of attitude is normal, or desirable in the abstract. The point to be kept in mind is that the principle laid down by Pope Leo is not to be contrasted with the policy of separation of Church and State. His principle is directly and universally opposed only to a policy of specious neutrality, which in practice is always a policy of hostility. To assume that "the public profession of religion" always calls for something radically different from the arrangement obtaining in the United States is to be guilty of confused thinking and to ignore important facts of experience.

4. (p. 4) Attitude of the State Toward the Church

But Pope Leo goes further. He declares that the State must not only "have care for religion," but recognize the *true* religion. This means the form of religion professed by the Catholic Church. It is a thoroughly logical position. If the State is under moral compulsion to profess and promote religion, it is obviously obliged to profess and promote only the religion that is true; for no individual, no group of individuals, no society, no State is justified in supporting error or in according to error the same recognition as to truth.[3]

Those who deny this principle may practically all be included within three classes: First, those who hold that truth will by its own power speedily overcome error, and that the State should consequently assume an attitude of impartiality toward both; second, those who assume that all forms of religion are equally good and true; third, those who hold that it is impossible to know which is the true one. The first theory is contradicted and refuted by the persistence of a hundred errors side by side with truth for centuries. In the long run and with sufficient enlightenment, truth will be sufficiently mighty to prevail by its own force and momentum, but its victory can be greatly hastened by judicious assistance from the State and, indeed, from every other kind of organized social power. The successful opposition of the Church to the Protestant Reformation in those countries where the Church had the sympathy and assistance of the State, is but one of a vast number of historical illustrations. Against the theory that all forms of religion are equally sound, it is sufficient to cite the principle of contradiction; two contradictory propositions cannot be true, any more than yes can be identified with no. Finally, it is not impossible to know which religion is the right one, inasmuch as the Church of Christ comes before men with credentials sufficient to convince all those who will deliberately examine the evidence with a will to believe. The argument and the proofs are summarized by Pope Leo in the paragraphs immediately following

[3] Cf. Cardinal Billot, *De Ecclesia Christi*, qu. xix, which is a recent and comprehensive presentation of the whole subject.

the one now under consideration. Such is the objective logic of the situation. In a particular case the public authorities can reject and frequently have rejected the evidence for the divinity of the Catholic Church.

It is not of such rulers or such States that Pope Leo is speaking in this part of the encyclical. The principle that he is here defending has complete and unconditional application only to Catholic States. Between these and the Catholic Church the normal relation is that of formal agreement and mutual support; in other words, what is generally known as the union of Church and State. In his encyclical on "Catholicity in the United States," the same Pope gave generous praise to the attitude of our government and laws toward religion, but immediately added:

"Yet, though all this is true, it would be very erroneous to draw the conclusion that in America is to be sought the type of the most desirable status of the Church, or that it would be universally lawful or expedient for State and Church, to be, as in America, dissevered and divorced. The fact that Catholicity with you is in good condition, nay, is even enjoying a prosperous growth, is by all means to be attributed to the fecundity with which God has endowed His Church, in virtue of which unless men or circumstances interfere, she spontaneously expands and propagates herself; but she would bring forth more abundant fruits if, in addition to liberty, she enjoyed the favor of the laws and the patronage of public authority."

Occasionally some Catholics are found who reject this doctrine on the ground that alliances between Church and State have done more harm than good. Space is wanting here for an adequate discussion and refutation of this contention. Nor is a formal criticism necessary. Men who take this position are indulging in what the logicians call "the fallacy of the particular instance." Because they find some forms of union between Church and State working badly in some countries for certain periods of time, they rush to the conclusion that all forms are bad, at all times, in all countries. An adequate evaluation of the arrangement, a judicious weighing of the good effects against the bad effects, supposes a knowledge of history

far more comprehensive than is possessed by any of these critics. Men who lack this knowledge ought to show a becoming modesty and hesitancy in making any general pronouncement on the complex effects of this policy.

One observation may be made which is calculated to prevent much misconception and false reasoning on this subject. It is that the *principle* of union between Church and State is not necessarily dependent upon *any particular form of union that has actually been in operation.* When men condemn the principle because they see that State support of the clergy, or State nomination of bishops, has in certain cases been harmful to the Church, they are laboring under a false assumption. Neither of these particular arrangements is required by the principle. Other critics identify the principle with the particular application of it that obtained in the Middle Ages. This assumption is likewise illogical and incorrect. The distinguished German theologian, Father Pohle, writes thus: "The intimate connection of both powers during the Middle Ages was only a passing and temporary phenomenon, arising neither from the essential nature of the State nor from that of the Church."[4] In the same article, he points out three grave evil results of this intimate connection; namely, excessive meddling by ecclesiastical authorities in political affairs, conflicts between the two powers which produced diminished popular respect for both, and "the danger that the clergy, trusting blindly to the interference of the secular arm in their behalf, may easily sink into dull resignation and spiritual torpor, while the laity, owing to the religious surveillance of the State, may develop rather into a race of religious hypocrites and pietists than into inwardly convinced Christians."

All that is essentially comprised in the union of Church and State can be thus formulated: The State should officially recognize the Catholic religion as the religion of the commonwealth; accordingly it should invite the blessing and the ceremonial participation of the Church for certain important public functions, as the opening of legislative sessions, the erection of public buildings, etc., and delegate its officials to attend

[4] *Catholic Encyclopedia.* Article, "Toleration."

certain of the more important festival celebrations of the Church; it should recognize and sanction the laws of the Church; and it should protect the rights of the Church, and the religious as well as the other rights of the Church's members.

Does State recognition of the Catholic religion necessarily imply that no other religion should be tolerated? Much depends upon circumstances and much depends upon what is meant by toleration. Neither unbaptized persons nor those born into a non-Catholic sect, should ever be coerced into the Catholic Church. This would be fundamentally irrational, for belief depends upon the will and the will is not subject to physical compulsion. Should such persons be permitted to practice their own form of worship? If these are carried on within the family, or in such an inconspicuous manner as to be an occasion neither of scandal nor of perversion to the faithful, they may properly be tolerated by the State. At least, this is the approved Catholic doctrine concerning the religious rites of the non-baptized. Only those religious practices of unbelievers which are contrary to the natural law, such as idolatry, human sacrifice and debauchery, should be repressed.[5] The best indication of the Church's attitude on this question is the toleration and protection accorded all through the Middle Ages to Judaism and Jewish worship by the Popes in their capacity of civil rulers of the Papal States. The same principle regarding freedom of worship seems fairly applicable to baptized persons who were born into a non-Catholic sect. For their participation in false worship does not necessarily imply a wilful affront to the true Church nor a menace to public order or social welfare. In a Catholic State which protects and favors the Catholic religion and whose citizens are in great majority adherents of the true faith, the religious performances of an insignificant and ostracized sect will constitute neither a scandal nor an occasion of perversion to Catholics. Hence there exists no sufficient reason to justify the State in restricting the liberty of individuals.

Quite distinct from the performance of false religious worship and preaching to the members of the erring sect, is the propagation of the false doctrine among Catholics. This could become

[5] Cf. Suarez, *De Fide*, disp. xviii, sec. 4, No. 9, 10.

a source of injury, a positive menace, to the religious welfare of true believers. Against such an evil they have a right of protection by the Catholic State. On the one hand, this propaganda is harmful to the citizens and contrary to public welfare; on the other hand, it is not among the natural rights of the propagandists. Rights are merely means to rational ends. Since no rational end is promoted by the dissemination of false doctrine, there exists no right to indulge in this practice. The fact that the individual may in good faith think that his false religion is true gives no more right to propagate it than the sincerity of the alien anarchist entitles him to advocate his abominable political theories in the United States, or than the perverted ethical notions of the dealer in obscene literature confer upon him a right to corrupt the morals of the community. No State could endure on the basis of the theory that the citizen must always be accorded the prerogative of doing whatever he thinks right. Now the actions of preaching and writing are at once capable of becoming quite as injurious to the community as any other actions and quite as subject to rational restraint.[6]

Superficial champions of religious liberty will promptly and indignantly denounce the foregoing propositions as the essence of intolerance. They are intolerant, but not therefore unreasonable. Error has not the same rights as truth. Since the profession and practice of error are contrary to human welfare, how can error have rights? How can the voluntary toleration of error be justified? As we have already pointed out, the men who defend the principle of toleration for all varieties of religious opinion, assume either that all religions are equally true or that the true cannot be distinguished from the false. On no other ground is it logically possible to accept the theory of indiscriminate and universal toleration.

[6] In its decision sustaining the law for the suppression of polygamy in Utah, the United States Supreme Court thus characterized the propagation of the doctrine of polygamy: "The existence of such a propaganda is a blot on our civilization. The organization of a community for the spread and practice of polygamy is, in a measure, a return to barbarism. It is contrary to the spirit of Chrisitianity and of civilization which Christianity has produced in the Western world." *Late Corporation of the Church of Jesus Christ vs. United States,* 136 U. S. 1.

To the objection that the foregoing argument can be turned against Catholics by a non-Catholic State, there are two replies. First, if such a State should prohibit Catholic worship or preaching on the plea that it was wrong and injurious to the community, the assumption would be false; therefore, the two cases are not parallel. Second, a Protestant State could not logically take such an attitude (although many of them did so in former centuries) because no Protestant sect claims to be infallible. Besides, the Protestant principle of private judgment logically implies that Catholics may be right in their religious convictions, and that they have a right to hold and preach them without molestation.

Such in its ultimate rigor and complete implications is the Catholic position concerning the alliance that should exist between the Church and a Catholic State. While its doctrinal premises will be rejected by convinced non-Catholics, its logic cannot be denied by anyone who accepts the unity of religious truth. If there is only one true religion, and if its possession is the most important good in life for States as well as individuals, then the public profession, protection, and promotion of this religion and the legal prohibition of all direct assaults upon it, becomes one of the most obvious and fundamental duties of the State. For it is the business of the State to safeguard and promote human welfare in all departments of life. In the words of Pope Leo, "civil society, established for the common welfare, should not only safeguard the well-being of the community, but have also at heart the interests of its individual members, in such mode as not in any way to hinder, but in every manner to render as easy as may be, the possession of that highest and unchangeable good for which all should seek."[7]

In practice, however, the foregoing propositions have full application only to the completely Catholic State. This means a political community that is either exclusively, or almost exclusively, made up of Catholics. In the opinion of Father Pohle, "there is good reason to doubt if there still exists a purely Catholic State in the world." The propositions of Pope Pius IX condemning the toleration of non-Catholic sects do not now, says

[7] *Supra,* page 5.

Father Pohle, "apply even to Spain or the South American republics, to say nothing of countries possessing a greatly mixed population." He lays down the following general rule: "When several religions have firmly established themselves and taken root in the same territory, nothing else remains for the State than either to exercise tolerance towards them all, or, as conditions exist today, to make complete religious liberty for individuals and religious bodies a principle of government."[8] Father Moulart makes substantially the same statement: "In a word, it is necessary to extend political toleration to dissenting sects which exist in virtue of a fact historically accomplished."[9]

The reasons which justify this complete religious liberty fall under two heads: First, rational expediency, inasmuch as the attempt to proscribe or hamper the peaceful activities of established religious groups would be productive of more harm than good; second, the positive provisions of religious liberty found in the constitutions of most modern States. To quote Father Pohle once more: "If religious freedom has been accepted and sworn to as a fundamental law in a constitution, the obligation to show this tolerance is binding in conscience." The principle of tolerance, he continues, cannot be disregarded even by Catholic States "without violation of oaths and loyalty, and without violent internal convulsions."[10]

But constitutions can be changed, and non-Catholic sects may decline to such a point that the political proscription of them may become feasible and expedient. What protection would they then have against a Catholic State? The latter could logically tolerate only such religious activities as were confined to the members of the dissenting group. It could not permit them to carry on general propaganda nor accord their organization certain privileges that had formerly been extended to all religious corporations, for example, exemption from taxation. While all this is very true in logic and in theory, the event of its practical realization in any State or country is so remote in time and in probability that no practical man will let it

[8] *Catholic Encyclopedia*, loc. cit.
[9] *L'Eglise et l'Etat*, p. 311 (Paris, 1887).
[10] Loc cit.

disturb his equanimity or affect his attitude toward those who differ from him in religious faith. It is true, indeed, that some zealots and bigots will continue to attack the Church because they fear that some five thousand years hence the United States may become overwhelmingly Catholic and may then restrict the freedom of non-Catholic denominations. Nevertheless, we cannot yield up the principles of eternal and unchangeable truth in order to avoid the enmity of such unreasonable persons. Moreover, it would be a futile policy; for they would not think us sincere.

Therefore, we shall continue to profess the true principles of the relations between Church and State, confident that the great majority of our fellow citizens will be sufficiently honorable to respect our devotion to truth, and sufficiently realistic to see that the danger of religious intolerance toward non-Catholics in the United States is so improbable and so far in the future that it should not occupy their time or attention.

5. (p. 6) Comparative Dignity of Church and State

No one who accepts the proposition that the Son of God founded a church to teach religion and bring souls to Heaven, can logically reject the principle laid down by Pope Leo in this paragraph. The spiritual and eternal interests of men are surely more important than their material and temporal interests; therefore, the society which deals with and promotes the former is more exalted than the society which cares for the latter. Empathically, then, the Church is "not inferior to the civil power."

For upwards of a century, however, the theory has been upheld by numerous writers on political science, and put in practice by many civil governments, that the State, not the Church, is the supreme social organization in the world. This theory assumes its most extreme and consistent forms in the Hegelian conception of the omnipotent State and in the Austinian theory of sovereignty. According to Hegel, the State is the highest manifestation and development of the universal reason; to it all individuals and all social institutions are subordinate,

and from it they all derive their importance and the justification of their existence. Hence the State is the highest institution on earth. According to the English political theorist, John Austin, the sovereignty of the State is unlimited. Every independent State is legally sovereign within its own territory, since it is not subject to other States, nor subordinate to any part of itself or any society within itself. While sovereignty thus defined is a purely legal concept, inasmuch as it merely describes the legal supremacy of each State over its own territory and the mutual independence of all States, it has been expanded so as to include moral implications. Is a sovereign State independent, not merely of other States, but of the moral law and the ordinances of religion? May a State reasonably do anything that it has the constitutional authority to do, regardless of the claims of individuals or societies? The answer given to these questions by most political theorists and by many political rulers has been in the affirmative. It has been in effect that the sovereignty of the State is not only legally but morally unlimited. The State is supreme and may do what it pleases. Among the English speaking peoples, as well as in Germany, the theory of State absolutism has made considerable progress both in theory and in practice.

From this point of view, the Church appears as not simply the less important of the two great societies, but merely one of several private associations existing within and subordinate to the State. On the other hand, the State is regarded as the highest expression of social life, co-extensive and all but identical with human society itself. To it is attributed the moral authority and supremacy that men once acknowledged as the prerogative of the Church. It usurps the place in society formerly held by the Church. It makes itself the spiritual and moral, as well as the temporal and civil head of society, the final determinant of social right and social wrong, social justice and social injustice. This is far more than a reversal of the doctrine set down by Pope Leo. As we shall see presently, the Catholic doctrine concedes, nay, maintains, that the State is co-ordinate with the Church and equally independent and supreme in its own distinct sphere. According to the Catholic position, the

Church is superior to the State only in the dignity of its nature and end, not in those matters that are the peculiar province of the State. According to the theory that we are now criticising, the State is supreme over the Church in all departments of life. The Church has no co-ordinate and independent authority, nor any province that is exclusively its own.

Happily there are many indications of a reaction against this theory of State omnipotence, this deification of the State. Says Prof. Harold J. Laski: "The two characteristic notes of change are present in the dissatisfaction with the working of law, on the one hand, and the reassertion of natural rights upon the other."[11] These are really two aspects of the same conception. Catholics welcome this reaction because they have always contended that the State, as well as the individual, is governed and limited by the natural law, that is, by the moral law which we know by the light of reason. They likewise insist that the actions of the State should be conformed to the law of Christian revelation, of which the guardian and interpreter is the Catholic Church. In our opposition to the theory of State omnipotence, we cannot indeed, go as far as Professor Laski, in his statement that, "sovereignty means no more than the ability to secure consent;"[12] for we recognize that the State has true moral authority, and that within certain limits, this authority is rationally and morally independent of the assent of the citizens. We do not accept that moral anarchism which would permit any social group at any time to withhold its allegiance and fix the limits of sovereignty. Our contention is simply that the sovereignty and authority of the State are not absolute, but are limited and defined by the proper end of the State and its methods of operation, and we insist that the sphere of the Church is not only distinct from that of the State, but higher in dignity and in importance.

6. (p. 7) The Church as Civil Ruler

The supreme and independent authority in the spiritual realm cannot be exercised adequately unless it is recognized by the

[11] *Authority in the Modern State*, p. 118.
[12] *Studies in the Problem of Sovereignty*, p. 14.

rulers of States. Pope Leo calls attention to such recognition in the official relations between civil governments and the Church for many centuries. Then he points out that "it was not without a singular disposition of God's providence," that this independence and freedom of action were for a long time safeguarded through the Church's possession and exercise of civil sovereignty. The reference is, of course, to the Papal States, the Temporal Power, which the government of Italy took by force from the Church in 1870. Pope Leo does not say that the Church must have civil power over the Papal States, or over any other territory, at all times and in all circumstances as "the surest safeguard of her independence." He is speaking historically. The end that he desires to see attained is freedom for the Church to exercise her spiritual and moral mission. Conceivably that end might be reached by other means than that of temporal sovereignty. It might be realized by adequate international recognition and guarantees.

7. (p. 7) The Independence of the State

In the clearest and briefest terms, Pope Leo here asserts that Church and State are mutually independent, and that each is supreme in its own province. This is the most authoritative and convincing answer to the charge that the Catholic doctrine makes the State subject to the Church. In the field of temporal affairs, in all that pertains to civic welfare, the State is supreme, and the Church has neither the desire nor the authority to interfere. It is true that the actions of the State, whether in the field of legislation or administration, have moral aspects, inasmuch as they are human actions; therefore, they are in some manner subject to the Church as the interpreter of the moral law. On this point we must make two important observations.

First, the proportion of State enactments and performances which raise a distinct and important moral question is exceedingly small. The great majority of the acts of government do not compel or permit the citizen to ask himself whether he is obliged in conscience to refuse his adherence. Therefore, they

are none of the Church's business. In the second place, when the Catholic citizen is constrained to regard a civil law or administrative action as unjust or immoral, he acts upon the same principle and adopts essentially the same course of action as the conscientious citizens who is not a Catholic. Even though he takes his moral guidance from the Church, his refusal of civil obedience does not put the Church in the position of interfering in the affairs of the State, or of denying the proper supremacy of the State. In deciding whether the obnoxious law ought to be obeyed, the non-Catholic citizen may consult his Bible, or his minister, or his church, or merely his own conscience. In a similar situation the Catholic citizen may consult his priest or his bishop, or the Pope. In neither situation is there a denial of the authority and supremacy of the State.

The case stands thus: While the authority of the State is supreme in civil affairs, it is not in every respect unlimited. It must be exercised in conformity with the moral law. Whether a particular act of the State is contrary to the moral law, is a question which obviously must be decided by some other authority or tribunal than the State itself, since the State has no competence in the field of morals. The solution will be sought by one man from his conscience alone, by another from the Church. In neither case is it proper to say that the supremacy of the State is denied.[13]

In times past the authorities of the Church occasionally seemed to exceed this function of moral interpretation of governmental acts. Apparently they sometimes claimed direct and immediate jurisdiction over the State; for example, when the Popes deposed temporal rulers. A brief review of the theological opinion on

[13] An extended discussion of some important controversies in which both Catholic and Protestant bodies refused to accept the unlimited authority of the State, will be found in Laski's *Studies in the Problem of Sovereignty.* Professor Laski declares that the true attitude is that which "denies the validity of any sovereign power save that of right, and [which] urges that the discovery of right is, on all fundamental questions, a search upon which the separate members of the State must individually engage" (*Authority in the Modern State,* p. 122). In this search, however, the individual who is a Catholic has a very great advantage over all others, since he can appeal to and apply the very definite, systematic, and authoritative moral teaching of the Church.

this subject, a brief notice of one famous historical instance, will suffice to meet this particular issue, and will at the same time make more clear the general doctrine concerning the limits of the State's independence.

No formal, dogmatic pronouncement has ever been made by the Church regarding her precise authority in civil affairs. Theologians have discussed the question at great length, but their opinions have not been unanimous. Three theories have found favor among them: The Church has direct power over States; her power in this field is only indirect; her power is merely directive and of counsel.

According to the first theory, both spiritual and temporal power have been committed by God to the Church; consequently civil rulers derive their authority from, are responsible to, and may be deposed by the Church. This opinion was never held by more than a few writers, chiefly Henry of Segusia (13th century) and Augustus Triumphus (14th century). The great majority of theologians in all ages have maintained that the power of the Church over the State is merely indirect. That is to say, the Church has authority to affect civil rulers or their ordinances only when and insofar as these have a distinct bearing upon religion or morals. This power is called indirect because it is not formally civil or political, but only spiritual with indirect civil effects and implications. According to this theory, neither a Pope nor a General Council, nor any other organ of the Church has the authority directly to depose a civil ruler.

When a Pope excommunicated a prince or king, the act was clearly one of spiritual jurisdiction. When, as sometimes happened, it was followed by a Papal declaration releasing the subjects of the excommunicated person from their oaths of allegiance, the latter pronouncement was likewise of a spiritual nature; for it directly concerned the binding obligation of an oath, which is primarily a religious engagement. The question whether the subjects of a Christian prince who had apostatized from the true faith were still obliged to give him obedience, was obviously a question of religion and morals. Unless we maintain that the State is the supreme authority in matters

of morality and religion, we cannot concede it the right to decide such a question. Therefore, an authoritative decision could come only from the Church. The effect of a decision unfavorable to the ruler was, indeed, quite the same as though the Pope had claimed the right to depose him directly. The king lost his kingdom. Nevertheless the course of action followed by the Pope was spiritual and moral throughout. At no point did it involve any claim of direct civil power.

With regard to the deposing power in the Middle Ages, we must remember that it was in many countries specifically recognized and accepted by the public law. To that extent the Pope did, indeed, exercise a direct power over the civil ruler, but it was a power that came from the concurrence of the State, not merely from his position as head of the Church. In all cases where such concurrence was not given, the deposing power of the Pope was only indirect, in virtue of his spiritual and moral jurisdiction.

Perhaps the logic and the precise nature of this indirect civil authority of the Church can be more clearly described if we abstract from the question of excommunication, oaths of allegiance and every other circumstance that was peculiar to the Middle Ages. Let us consider one or two modern instances. Suppose that the people of Russia were suddenly converted to the faith of the Roman Catholic Church, and that they appealed to the Pope for an authoritative judgment as to whether they were obliged to support the government of Lenine and Trotzky. Obviously this is a moral, not a legal question. A great number of the world's newspapers, publicists and politicians, would give a negative answer, and their reasons would necessarily be stated in terms of ethics. Their moral standards would be in most cases provided by their private judgment, by the dictates, let us say, of their own consciences. We will suppose that the Russians place more confidence in the authoritative moral judgment of the Catholic Church than in that of journalists or politicians. After due consideration of all the facts (a process frequently disregarded by journalists and politicians) the Pope decides that the people of Russia are under no moral obligation to continue their support of the Communist regime. In con-

sequence of the acceptance of this decision by the Russian people, the government is unable to continue. In effect the Pope has deposed Lenine and Trotzky.

Many contemporary persons who would loudly applaud this action of the Pope because they like the result to which it leads, are prone to denounce the deposing power of the Popes, as exercised in past ages, and to resent any similar exercise of the indirect power of the Church in any other department of civil affairs. Yet all such actions exemplify the same principle; namely, that the Church, as the guardian and authoritative interpreter of the moral law, has as much right to pronounce upon the morality of political actions and relations as upon the morality of the actions and relations of private societies and individuals.

For those who deny this indirect power of the Church over the State, this right to affect political affairs having a religious or moral aspect,—the only practical alternative is to accept the theory that the power of the State is unlimited morally as well as legally. This means that whatever is done by the State, any State, even the State of Lenine and Trotzky, is morally right, and all actions in opposition thereto are morally wrong. Nor is there any escape from this dilemma by assuming that the subjects or citizens of a conceivably immoral regime may properly refuse obedience under the sanction of their own consciences. In this case they are setting their consciences above the State. They are giving allegiance to another authority in preference to the State. Therefore, they are quite as disloyal to the State as are our imaginary Russians whose consciences bid them to seek and accept the moral judgment of the Catholic Church. In both cases the fundamental appeal is to the consciences of the citizens. In both cases conscience denies that the State is morally omnipotent and infallible. The difference between the operations of conscience in the two cases is a difference of method, not of principle.

Let us consider a milder instance of the indirect power, one that involves not the rejection of a government, but the refusal to obey a particular law. For several years a numerous and well organized band of bigots have been striving for an amend-

ment to the Constitution of Michigan which would prohibit the operation of parochial schools. Suppose this aim were accomplished, and the authorities of the Church formally declared the amendment to be unjust and not binding upon Catholics. This would be an exercise of the indirect power of the Church over the State. The Church would have interfered with, opposed, an ordinance of the State on the ground that the religious and moral rights of Catholic citizens were violated. But the Lutheran church in Michigan would probably take the same stand, and continue to maintain its parochial schools. While the authorities of this church would probably not defend their position by any formal claim to indirect power over the actions of the State, their course would have quite the same effect practically. It would imply the right to determine when a State ordinance is out of harmony with the ordinances of religion and morality, and the right to refuse obedience to civil regulations which were found to be of this character.

We recur to the statement of the issue by Professor Laski: "We deny the validity of any sovereign power save that of right." And "the discovery of right," which Professor Laski declares to be the duty of the individual members of the State, is for the Catholic citizen achieved in the authoritative decisions of the Church. That is the whole of the situation, considered practically. If a moral decision of the Church which is adverse to a government or a law, is accepted by a sufficiently large section of the citizens, the State will find itself in difficulty. But the same thing will happen if a sufficient number of citizens are moved by their individual consciences to repudiate the actions or laws of the government. In both cases the independence of the State is not questioned within its legitimate field; it is denied only when the State transgresses the moral law.

In the light of the foregoing discussion, the pretended menace to civil authority from the allegiance of Catholic citizens to the Church vanishes into thin air. The Church has no authority, direct, indirect, or of any other sort or description, over the acts of the State, so long as these are not in conflict with religion or morality. If any Church official, priest, bishop or Pope, were to command Catholics to vote a certain way on free

trade, or an income tax, or a bonus for ex-soldiers, or any other political issue that involves no clear moral or religious question, the injunction would properly be disregarded by substantially all to whom it was addressed. Even in regard to political matters that have a distinct moral aspect, the authorities of the Church never issue instructions, or even advice, unless the question is one of very grave importance and its moral or religious implications are evident to all. Those who profess to believe that any modern State is threatened by the claim of the Church to pronounce judgment on the moral phases of civil affairs, are ignorant alike of the principle and the manner in which it is customarily applied.

The third theory of the theologians concerning the power of the Church over the State, describes that power as "directing or guiding." Inasmuch as it does not differ greatly from the theory of indirect power, and inasmuch as it was never held by any considerable number of writers (Gosselin and Fenelon are the principal names) it need not be further examined. The prevailing Catholic view is now, as it has been always, that which is known as the theory of indirect power.

Against this statement the objection may be made that the Bull, "Unam Sanctam," of Pope Boniface VIII formally defined the power of the Church over the State to be direct. This is the famous doctrine of the "two swords," the one spiritual and the other temporal, both "in the power of the Church." For our present purpose the following will be a sufficient reply to this objection. In the first place, even if Boniface had intended to assert that the Church has direct power over the State, this declaration would not be defined dogma, since the only dogmatic definition in the Bull is the statement, "that all must give due religious obedience to the Pope." [14] In the second place, all Catholic authorities from Pope Clement V (the second successor of Boniface) to the present, have interpreted the Bull as claiming only indirect power in civil matters.[15]

Our discussion of the authority of the Church over the State

[14] Hergenroether, *Catholic Church and Christian State*, vol. I, p. 31.

[15] Cf. Cardinal Manning, *The Vatican Decrees and their Bearing on Civil Allegiance*, pp. 57-71.

in matters having a moral or spiritual aspect, may be fittingly concluded by a quotation from Cardinal Hergenroether: "The indirect power of the Church in matters temporal in general, and in relation to the dethroning of princes in particular, is not a temporal but a spiritual power. It is exerted in matters temporal only in so far as they intrench upon religion, and in this way cease to be purely temporal."[16]

8. (p. 8) The Question of Joint Jurisdiction

After declaring that each of the two great societies is supreme in its own sphere, Pope Leo points out that there is a common province or borderland over which both have jurisdiction. "One and the same subject, related differently, . . . might belong to the jurisdiction and determination of both." Hence arises the problem of marking the limits of the two jurisdictions, of determining which parts, or aspects, or relations of a common field or subject belong to the Church, and which to the State. The principle of distinction is precisely the same as that which separates the provinces themselves. That principle is to be found in the respective natures and ends of the two societies. Jurisdiction and function are determined by nature and ends. Spiritual and moral matters constitute the province of the Church; civil and temporal matters that of the State. The latter has no authority over the administration of the sacraments; the former has nothing to do with the maintenance of the police force. In those borderland subjects which fall under the jurisdiction of both societies the distinguishing principle is the same. Those phases of a common subject which have a moral or religious character belong to the Church; those which are in their nature and objects temporal are under the authority of the State. Thus, education is a concern of the State in its civil and social aspects, and of the Church in its religious and moral aspects.

While this principle is sufficiently clear in its conception, in the abstract, it is not always easily applied in practice. Hence

[16] Op. cit., vol. II, p. 209. Cf the whole discussion of the question by Cardinal Hergenroether.

we find frequent disagreements between Church and State concerning this borderland. Indeed, some States have gone so far as to claim the whole territory for their exclusive jurisdiction, and to deny that any of these "mixed" or common matters belong to the Church in any degree or under any aspect. For example, more than one State has instituted a monopoly of education, and has taught its own doctrines of religion and morality.

The principal matters that provoke controversy concerning the mutual limits of jurisdiction of the two societies, are marriage and education. According to Catholic doctrine, marriage is not merely a civil contract; it is also a sacrament. Since its sacramental character, being a spiritual entity, is higher than its civil character, the matrimonial contract must be conceived and regulated in harmony with its spiritual nature and purposes. The Church cannot sanction or recognize a marriage which is contrary to either the revealed or the natural law. Therefore, she lays down conditions for the validity of the matrimonial contract, conditions which are necessary to safeguard its spiritual and sacramental character. A disagreement with the State arises whenever the latter independently attempts to regulate the validity of the contract.

According to the Catholic position, the State has no right to make laws affecting the validity of the marriages of baptized persons. The Church does not deny that the State has a civil and social interest in the marriage contract, but she maintains that her own standards of validity, her own regulations on this subject, being in accord with the moral laws of both nature and revelation, are wisely calculated to safeguard the civil and social as well as the spiritual welfare of the contracting parties and of mankind as a whole. She does not admit that human welfare, or social welfare, is promoted by State recognition of any marriage that she pronounces invalid, nor by State prohibition of any marriage that she declares to be valid. She recognizes, indeed, that the State may properly impose certain regulations which do not affect validity, but which are necessary for the common good, and therefore morally binding upon the persons concerned. Such are the requirements of residence, an official license to marry, the registration of the marriage by the officiating clergy-

man, and many others. But the Church maintains that none of these conditions is of sufficient importance to justify the State in declaring invalid a marriage in which they have been disregarded.

In Catholic countries maintaining a union between Church and State, the problem of the two jurisdictions in the matter of marriage has generally been adjusted in accordance with the foregoing statements. In non-Catholic and secular States, there has always been more or less disagreement, because the civil authority has insisted upon setting up its own standards for the validity of the matrimonial contract. The principal difference has been concerning divorce and civil marriage. In this situation the Church endeavors to minimize the friction. For example, while she does not regard as invalid some marriages which the civil power proclaims to be such, as those between blacks and whites in some of our Southern States, she uses all reasonable means to make her practice conform to the law.

Conflict between the two societies in the field of education should be easily preventable in Catholic countries. Inasmuch as the pupils are all Catholics, it is feasible to include formal religious and moral instruction in the curriculum of the State schools, and to give them the proper religious atmosphere. And this is the obvious duty of a Catholic State. It is possible and frequently desirable for a non-Catholic or a secular State to grant pecuniary aid to denominational schools, according to the amount and quality of general instruction imparted in them. This system obtains in England, in some of the provinces of Canada, and in some other countries. It is obviously impracticable for the State to provide religious training for the children of various denominations that attend the public schools; but the Church has a right to expect that the teachers will not directly or indirectly propagate doctrines that are contrary to the Catholic religion or to sound morality. Finally, neither the Catholic nor the non-Catholic State has a right to maintain a monopoly of education.

In the light of the foregoing discussion, it is evident that an amicable adjustment of the relations of Church and State in matters of common jurisdiction, ought to be comparatively easy

in Catholic States. On Catholic principles the limitations of the two jurisdictions can be ascertained with the exercise of a reasonable amount of effort and good will. Even in non-Catholic and secular States, it is possible to arrive at an adjustment which, though not in full accord with Catholic claims, will forestall misunderstanding and actual friction. All that is necessary for this purpose is that the civil authorities should seek merely to promote the public welfare, and not to make difficulties for the Church.

9. (p. 9) Concordats

As a matter of historical fact, however, disagreements have arisen between the Church and even Catholic States concerning the mutual limits of their respective jurisdictions. In such cases, says Pope Leo, "rulers of the State and the Roman Pontiff come to an understanding touching some special matter." In other words, the two powers draw up and give their solemn assent to a sort of treaty or compact. To such an instrument has been given the name of concordat. Its general purpose is "to terminate, or avert, dissension between the Church and the civil powers." The great majority of concordats have been made to put an end to disagreements already begun, and have included some concessions by the Pope. Hence the statement of Pope Leo: "At such times the Church gives signal proof of her motherly love by showing the greatest possible kindness and indulgence." More than fifty concordats have been established since the year 1107, the majority of them in the nineteenth century.[17]

10. (p. 14) Rights of the Church Denied by Many States

In this paragraph Pope Leo summarizes the principal ways in which the secular theory of the State leads to the violation of the rights of the Church. Under the pretense of separating Church and State, governments have usurped control of marriage, confiscated Church property, disregarded those rights over

[17] Ch. *Catholic Encyclopedia:* Art., "Concordats."

education which are inherent in both the family and the Church, made their own determinations of the respective spheres of the two societies without consulting the Church, and in general treated the latter as merely one among several private societies, all of which are regarded as completely subordinate to the State. Our non-Catholic fellow citizens who are unable to understand why churchmen denounce the doctrine of separation of Church and State, would see the matter in a clearer light if they reflected that these denunciations are uttered against a conception and a form of separation which is entirely different from that which obtains in the United States.

11. (p. 15) The Sovereignty of the People

Only the unthinking and the malicious will see in this paragraph a condemnation of democracy, or of the doctrine of "the consent of the governed." For the Pope specifically states that the theory which he denounces attributes political sovereignty to the people, "without any reference to God." As he had already pointed out in this encyclical, all authority, all sovereignty, all right to rule, whether in Church or State, comes ultimately from God. Therefore, even in democratic States, the people are merely the depositories, not the original source of political authority.[18]

Evidently a political community is bound to exercise its power in conformity with the reason and will of God. The people have not the moral right to do what they please with their governing authority. They have only the right to do that which is morally lawful. This is determined by the end of the State, which is the protection and furtherance of the common welfare. Now the common welfare is not promoted by a political theory or a political constitution which teaches, "that seditions may rightfully be fostered." A government which attempted to function on the basis of this doctrine would be a constant menace to social well-being.

Pope Leo condemns the theory, "that princes are nothing

[18] A full discussion of the sense in which the people are sovereign will be found in chapter IV.

more than delegates chosen to carry out the will of the people." This is obvious common sense. In a political constitution which includes hereditary kings or princes, it is specified and understood that the tenure and powers of these functionaries is not immediately and constantly dependent upon the approval of their subjects. Princes are, indeed, morally bound to exercise their authority in such a way as to promote the common good, but this object is not always quite the same as the aim of the popular will. When their rule has degenerated into tyranny, subversive of the social good, they may (as will be explained later in this volume) be deposed by the people; but this is an extreme situation. To accept this principle is very different from admitting that princes are at every moment subject to the will and disposition of the people.

Even republics do not admit that public officials must always carry out the wishes of the people, or that their administration may at any time be terminated by the people. Elected officials are, indeed, frequently expected, and properly so, to carry out a few large and important policies to which they have committed themselves during the election campaign; but there is always an immense number and variety of matters upon which the people have made no pronouncement, and concerning which officials may properly exercise their own best judgment. When officials, as sometimes happens, violate their explicit pledges to their constituents, they are still entitled to hold office to the end of the term for which they have been elected. There is, indeed, an exception to this rule in States which have adopted the political device known as the recall. Even in this situation the matter must be conducted according to certain forms prescribed by law. A special election must be held at which the voters decide whether the offending official will be permitted to serve out the term for which he was originally chosen. This procedure and the theory underlying it, are quite different from the method and theory which are condemned by Pope Leo. The former are in accord with reason and good order; the latter are the expression of popular whim. The former safeguard the common welfare; the latter place it in constant jeopardy.

12. (p. 16) Freedom of Speech and Writing

In this paragraph Pope Leo explicitly rejects the doctrine of unlimited freedom of expression. The logic of his argument is unassailable. Speech and writing are not ends in themselves. They are only means to human welfare. The chief constituents of welfare are virtue and truth; the chief obstacles, vice and error. Any action or institution which exposes men to the latter is contrary to human welfare, to social welfare, and, so far as possible, should be prohibited by the State. As a matter of fact, this principle is to some extent recognized in the laws of every enlightened people. False statements injurious to the neighbor, teaching the young immoral practices, publishing and distributing indecent literature,—are scarcely anywhere recognized as legitimate liberties. No peculiar sacredness inheres in the vocal organs or in the faculties which produce the written or printed page. There is no more reason for permitting a man to say or write what he pleases than for permitting him to exercise any other set of muscles according to his unregulated pleasure and regardless of social welfare.

All this is too evident to need formal statement. Why, then, are men,—in modern times probably the great majority of men —so thoroughly devoted to the policy of freedom of expression? There are four main reasons or arguments. The first is that such freedom is among the individual's natural rights. In reply let it suffice to point out that all natural rights are only means to some rational end, such as life, liberty, and the development of human faculties. Now freedom of expression carried so far as to include the utterance of doctrines which are false and injurious to human welfare is not a rational freedom, since the end which it promotes is irrational. Consequently, there exists no such natural right, any more than there exists a natural right of a manufacturer to adulterate food. Of the two forms of adulteration that which injures mind and character is frequently more deadly than that which harms only the body. Therefore, the natural right of freedom of expression extends only to those opinions and doctrines which are true and righteous.

The second argument for unrestricted freedom of speech and writing maintains that in certain departments of thought the difficulty of distinguishing between truth and error, or between a socially beneficial and a socially harmful doctrine, is so great as to render the attempt to repress wrong opinions and teachings productive of more harm than good. This assumption is applied especially to the fields of religion, politics, and industry. In a preceding note, we have dealt with the subject of religious freedom. Here we shall merely repeat that all men of good will can find and recognize the true religion, and that when it is recognized and adopted by the vast majority of the citizens, the State ought to protect them by all legitimate means against the advocacy of false religious notions. It is quite as much the duty of the State to safeguard the spiritual welfare of its members as their moral and physical welfare.

In politics and industry, however, the task of separating truth from error is much more difficult. There exists no infallible authority or institution to perform this service. Concerning the great majority of opinions in both politics and industry, no prudent man will stake his eternal salvation, or his reputation, on the proposition that his theories and policies are infallibly right and socially beneficial, and that all opposing doctrines are certainly wrong and subversive of the public welfare. Nevertheless, there are certain fundamental and primary political and economic principles which every democratic government assumes to be, if not certain, at least essential to good order and the welfare of the people. Among these are the proposition that changes in the form of government should not be effected by force, and that industrial betterment must not be pursued by means of the destruction of property. Since actions of this sort are inadmissable, the *advocacy* of them is likewise improper and unjustifiable. Hence the laws of the United States provide for the deportation of aliens who indulge in this particular sort of freedom of expression. During the great war, liberty of speech was very considerably restricted on the assumption that actions or omissions which tended to prevent successful prosecution of the war, could not reasonably be advocated in speech or in writing. The safety of the nation

was postulated as something about which there could be no legitimate difference of opinion, and against which the doctrine of free speech could not properly be invoked. Apart from these fundamental assumptions which involve the security of the State and of such important social institutions as private property, our laws permit complete freedom of expression, so long as it conforms to the elementary canons of public decency.

The third reason adduced for unlimited freedom of speech and writing is in some measure a corollary of the second. Since truth cannot readily be distinguished from error beforehand, all opinions should be permitted to prove themselves by the method of competition. In this contest between what is true and what is false, the former will ultimately triumph. The insuperable objection to this method lies in the word "ultimately." The injury done to the bodies and souls of millions of men through the unrestricted propagation of false opinions during hundreds of years, is scarcely offset by the fact that in the long, long run, these doctrines will have become discredited in the contest with truth. History admonishes us that truth and error can exist side by side for centuries, the latter as well as the former continuously winning new adherents. When the State adopts a policy of permitting the advocacy of socially injurious error, it neglects its duty to the numerous generations that come and go in the long interval before error is "ultimately" vanquished.

In the fourth place, unrestrained freedom of expression is defended on the ground that it is the smaller of two evils. To expose the minds and souls of men to wrong doctrine is deplorable, but to provoke continual strife in the commonwealth by attempting to repress it, is frequently a greater calamity. This is a sound practical rule. As we have seen in the discussion of religious freedom, the Church admits that such a policy may be preferable even when error appears in its worst form, namely, as a denial of the religion established by God. With much greater reason can the policy be applied to political and economic opinions, since the evil results of false doctrines in these fields are not nearly so great as those that ensue upon the propagation of errors in religion. Moreover, the public repression of any

beyond the obviously harmful political and economic doctrines is frequently unjust and almost always of doubtful justice, since it is impossible to determine with certainty whether the proscribed views are really erroneous and socially injurious. Again, it is extremely difficult to frame legal prohibitions of expression which cannot by administrative abuse be carried much further than the intentions of the lawmakers. We had innumerable instances of this abuse in the administration of the espionage act during the Great War, and we have seen the intolerable degree of repression which would have been possible under some of the restrictive measures which were nearly enacted by Congress in the winter of 1920. In view of the foregoing and other practical considerations, it is clear that, save in the case of a few fundamental principles which are essential to the existence of our political and economic institutions, complete liberty of speech and of writing, within the limits of public decency, should be permitted and protected in the domains of politics and economics. In this situation the theory of competition is correct. To permit truth and error to compete for supremacy in the market place of discussion, is the less of two evils.

The sum of the matter is that while many of the current arguments for unlimited freedom of expression are unsound, the practical policy that has been adopted by most modern States is in the main justifiable; but it is defensible only on grounds of practical expediency, not on the basis of natural rights or any other objective doctrine.[19]

13. (p. 18) "Intolerance" in the Syllabus

The celebrated Syllabus of 79 propositions condemned by Pius IX, has received more adverse criticism than almost any other document issued by the Holy See in modern times. In view of the principles that we have reviewed in the foregoing pages, however, the proscriptions contained in this document are justifiable and reasonable. The four propositions quoted on

[19] For an authoritative discussion of this subject see the extracts from Pope Leo's encyclical on *Human Liberty* in chapter XI.

page 18 are fair samples of the proscribed doctrines. In the first of the four we find a denial of any rights to the Church except those which the State is willing to concede. The principle expressed in this proposition is fatal to the rights and welfare, not only of the Church, but of every other organization to which the citizens may wish to belong. If the civil power may justly determine the rights and activities of the Church, it may with greater reason exercise the same control over all lesser societies. Men could not maintain a trade union, a fraternal association, or a debating society if the State decided to forbid them. This is tyranny and absolutism. Of course, the State has a right to regulate and limit the activities of private societies to the extent that is necessary for public welfare, but it has no right to restrict their freedom beyond this point, much less to forbid their existence entirely. The right to form associations for common advantage is among the rights which men derive from reason and nature. It is not a right which may properly be denied or arbitrarily restricted by the State.

The right of the Church to exist and perform all her necessary functions is not only natural, as in the case of private societies, but supernatural, inasmuch as the Church was directly established by Christ. Non-Catholics do not acknowledge this claim, but they need not do so in order to concede the reasonableness of immunity from arbitrary State interference. The rights and the freedom claimed by the Church in virtue of her divine foundation and mission do not injure any genuine public interest, nor limit any of the legitimate powers of the State. The best practical evidence of this statement is provided by the history of the Church in the United States of America.

Proposition XXXIX is a bold enunciation of the doctrine of State omnipotence. It asserts in effect that neither individuals nor associations have any rights which the State is bound to respect. The civil government may do what it pleases with the liberty, the property and the lives of the citizens. This monstrous doctrine was not the least of the forces which moved the people of the United States to enter the war against Germany. Prussian autocracy was discerned to be not merely

a bad thing for the Germans, but a constant menace to democracy throughout the world.

The proposition which affirms that Church and State should be separated, was condemned because of its universal terms. Pope Pius IX did not intend to declare that separation is always unadvisable, for he had more than once expressed his satisfaction with the arrangement obtaining in the United States. What he condemned was the doctrine that in no country, in no circumstances, should Church and State be united. The untenableness of this doctrine has been sufficiently shown in preceding pages.

In the last of the four propositions quoted, it is asserted that unlimited liberty of religious and other opinions does not lead to the corruption of morals or the spread of religious indifference. This is a question of fact, and experience as well as common sense assures us that the license to preach immoral doctrines increases immorality, while indifference toward religion on the part of the State tends to produce a similar attitude among many of the citizens.

14. (p. 19) Public Protection for all Forms of Religion

This sentence expresses briefly the true principle of religious toleration and its sole justification. In a genuinely Catholic State, public authority should not permit the introduction of new forms of religion; but when several denominations have already been established, the State may, and generally should, permit them all to exist and to function. The reason is that the attempt to suppress them would on the whole be injurious to the commonwealth.

15. (p. 23) Catholic Participation in Political Affairs

Pope Leo here states the ordinary Catholic doctrine concerning the duty of the citizens to take part in politics. Of course, he has in mind governments which exemplify the republican principle. The public welfare depends upon the conduct of

government; the policies and activities of government are determined fundamentally by the citizens; therefore, the latter are morally bound to devote a reasonable amount of time and effort to the task of providing and promoting good government. For the individual citizen this is not merely a political right; it is a duty of legal justice, of that justice which obliges all members of the commonwealth to further the common good within the limits of their powers and opportunities.[20]

[20] For a full treatment of this subject see chapter XIII.

3. THE MORAL ORIGIN OF CIVIL AUTHORITY[1]

By Louis Cardinal Billot, S.J.

The statement that political authority is immediately from the people, can be understood in two ways: Either from the people, as it were, abdicating and transferring by a donation or contract that authority to those who preside over the commonwealth; or from the people, creating organic law in virtue of which authority is embodied in such or such a governmental form, and given to such or such a possessor. . . . The difference between these two ways may be illustrated by an example taken from the law of property. I may receive dominion over a thing from another person, as the rightful possessor who now makes mine that which was his, as if Titius would donate to me his field; or from another, as from the immediate author of a law by which dominion is acquired, as if, in virtue of prescription enacted by the civil legislator, I begin to be the owner of a piece of land which before did not belong to me. That magistrates derive their power proximately from the people, is explained by most of the older scholastics according to the analogy of the former example. But we think that we should base the explanation rather on the second example. However, these points concern only the deeper understanding of the doctrine, and maybe this is a dispute more about words than things. In any case, forms of government and titles to exercise power, and power itself, as existing in its determinate possessors, are not immediately from God, but only through the medium of human consent, that is, the consent of the community.

An objection to the foregoing statement has been brought

[1] The paragraphs of this chapter are a free translation of the greater part of Propositions III and IV, section 1, question 12, chapter 3, *De Ecclesia Christi.*

forward from the words of the Encyclical of Pope Leo XIII, *Diuturnum Illud:* "It is important to bear in mind that those who are to preside over the commonwealth can in some cases be selected by the will and judgment of the multitude, without any opposition on the part of Catholic teaching. By this selection indeed the sovereign is designated, but the rights of sovereignty are not conferred: authority is not delegated, but the person who is to exercise it is designated." We reply that these words merely set forth the pure and simple doctrine of faith against the pernicious innovation with which very many were infatuated in the sixteenth century, and which in the eighteenth century led to the monstrous error of the Social Contract. . . . What the Pope denies is that the popular choice ever confers the rights of sovereignty in the sense of those who oppose Catholic doctrine; that is, in the sense that the right of sovereignty *in itself* comes from the people, after the manner of an instrumental power which flows from a supreme commissioner to one commissioned. In a word, the Pope denies what has been unanimously denied at all times by Catholic theologians. And the Pope agrees with the theologians likewise in his positive affirmations. Since authority in itself is constituted not by human but by divine natural right, there is nothing left for human will or action but the determination and designation of the ruler. . . . Through this designation the people become the proximate cause, not indeed of power as such, but of the conjunction of power with such a person, according to such or such a measure, and such or such conditions. Hence the Pope's statement does not remove from the community the power that is truly constitutive of government. . . .

Other objections are made by recent authors who hold that the power of sovereigns is derived immediately from God. One of these maintains that society cannot confer authority, since there is no constituted society prior to the institution of a government. I reply: At the moment before the institution of a government there exists a society constituted, not indeed ultimately and in perfect actuality, yet in potentiality, whenever there exists a determinate multitude of men assembled to help one another for a political end. Nor are the means wanting

to produce the effect. Unless we fancy that civil societies have been immediately instituted by nature, we must recognize the existence of some constituting power in the community, in the first stage of political society. Before the institution of a government, therefore, there is already at hand a social power, not indeed for governing that society, but for constituting sovereignty from which the governing power is derived. . . .

According to the second objection, if political power is from God in any way whatsoever, it must be from God in some determinate and concrete subject or possessor. My reply is that political sovereignty, in so far as it is from God, exists immediately in a concrete subject or possessor, namely, in the community itself, by which it is afterwards retained, or is transferred to one monarch, or to a select group. Moreover, the power of jurisdiction is not to be likened entirely to physical forms which do not exist except in some determinate subject. If this were true, the Papal power would be extinct in the interval between the death of a Pope and the election of his successor. . . . If you ask where is political power, as immediately instituted by God? I reply: In the law of nature, or in the ordinance of the divine reason, which is manifested by human nature and written in the human mind. But this general ordinance must be determinated by men. Hence the actual holder of political authority, holds it by human law as its proximate source; but political authority as such does not come from men; they merely determine the form in which it will be actualized, and the person or persons by whom it will be exercised.

The third objection is that this doctrine of popular determination of government and selection of the ruler, provides a foundation for sedition and rebellion against the monarch. In reply, I would point out that there is no doctrine which cannot be abused. Yet no doctrine ought to be condemned for that reason alone. The view that authority is conferred by God immediately upon the ruler has likewise been abused, and it is hard to tell which abuse has been the greater or the more detestable. It is certain that the regalists have been led to conclude that kings as such may claim supreme indifference or irresponsibility, whence they extended the powers of civil society

even over religion. . . . All that we can do is to abstract altogether from abuses, and to seek only what truly follows from principles. There is no foundation for rebellion in any doctrine which asserts the divine precept of obedience to constituted authority. This precept is neither taken away nor lessened by our doctrine. From the fact that the ruler does not derive his authority immediately from God, it does not follow that the precept of obeying constituted authority is destroyed or weakened.

Nor does it follow that one government can be deposed and another instantly substituted at the whim of the multitude. . . . A will which does not follow the order of reason neither has nor can have validity. However, let us not conjure up imaginary suppositions which have no place in our actual world. Let us remember that changes of government, whether licit or illicit, are humanly unavoidable, and that this instability can never be eradicated by any force or any theory. The practical question is, which of the two doctrines that we are considering is more conducive to the peace and prosperity of the commonwealth? Is it our doctrine? or is it forsooth that other doctrine which is based on a preposterous conception of legitimacy, and which would recognize in dynasties of kings a right as immovable as in the succession of the Pope to the Apostolic See? Let us consider this question at somewhat greater length.

The right of sovereignty is unlike the right of property, inasmuch as it is by nature ordained not for the benefit of him who holds it, but for the benefit of society. Hence if at any time the public good requires a new form of government and a new designation of rulers, no pre-existing right of any person or any family can validly prohibit this change. The right to create the new legitimate government inheres in the community habitually or potentially. However, it ought not to be used rashly and whimsically, but only when its use is demanded by the common good and social tranquillity.

The question may be asked, when is the demand of social necessity evidently verified? For answer we do not need to go far away, nor to take refuge in metaphysics. The necessity of constituting a new government exists whenever the preceding

government has been destroyed, and there has been introduced a new government which cannot be abolished without detriment to peace. In such a situation, the new government is legitimate, even though the preceding one was destroyed by iniquitous rebellion, for the only pertinent question concerns what is here and now required by the supreme law of the common good. By this supreme criterion it is evident that the community has the same right to constitute a new sovereignty as it had at the beginning of its political existence. Generally speaking, every civil government is to be held legitimate from the moment when it has been constituted and accepted and regularly exercised. . . .

This conclusion is confirmed by the ancient and immemorial practice of the Church. She has always recognized as legitimate governments of whatsoever origin, once they had been constituted and had been confirmed by the consent of peoples. . . . This perpetual practice and discipline of the Church has been illustrated by a doctrinal declaration of Pope Leo XIII in that memorable Encyclical to the French, *Au Milieu des Sollicitudes:*

> However, here it must be carefully observed that whatever be the form of civil power in a nation, it cannot be considered so definitive as to have the right to remain immutable, even though such were the intention of those who, in the beginning, determined it. . . . Only the Church of Jesus Christ has been able to preserve, and surely will preserve unto the consummation of time, her form of government. Founded by Him who was, who is, and who will be forever, she has received from Him, since her very origin, all that she requires for the pursuing of her divine mission across the changeable ocean of human affairs. And, far from wishing to transform her essential constitution, she has not the power even to relinquish the conditions of true liberty and sovereign independence with which Providence has endowed her in the general interest of souls. . . . But, in regard to purely human societies, it is an oft-repeated historical fact that time, that great transformer of all things here below, operates great changes in their political institutions. On some occasions it limits itself to modifying something in the form of the established government; or, again, it will go so far as to substitute other forms for the primitive ones—forms totally different, even as regards the mode of transmitting sovereign power.
>
> And how are these political changes of which we speak produced? They sometimes follow in the wake of violent crises, too often of a

bloody character, in the midst of which pre-existing governments totally disappear; then anarchy holds sway, and soon public order is shaken to its very foundations and finally overthrown. From that time onward a social need obtrudes itself upon the nation; it must provide for itself without delay. Is it not its privilege—or, better still, its duty—to defend itself against a state of affairs troubling it so deeply, and to re-establish public peace in the tranquillity or order? Now, this social need justifies the creation and the existence of new governments, whatever form they take; since, in the hypothesis wherein we reason, these new governments are a requisite to public order, all public order being impossible without a government. Thence it follows that, in similar junctures, all the novelty is limited to the political form of civil power, or to its mode of transmission; it in no wise affects the power considered in itself. This continues to be immutable and worthy of respect, as, considered in its nature, it is constituted to provide for the common good, the supreme end which gives human society its origin. To put it otherwise, in all hypotheses, civil power, considered as such, is from God, always from God: "For there is no power but from God."

Consequently, when new governments representing this immutable power are constituted, their acceptance is not only permissible but even obligatory, being imposed by the need of the social good which has made and which upholds them. This is all the more imperative because an insurrection stirs up hatred among citizens, provokes civil war, and may throw a nation into chaos and anarchy, and this great duty of respect and dependence will endure as long as the exigencies of the common good shall demand it, since this good is, after God, the first and last law in society.

4. SOVEREIGNTY AND CONSENT

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"The old order changeth, yielding place to new."[1] In the perennial struggle between freedom and force, between equal law and unequal privilege, we have come again to a turning point in history. Under the ancient practice of slave-hunting and of slavery by conquest, we arrived at a condition of four hundred thousand slaves in Athens, the most enlightened city in the world, with not more than twenty-one thousand free citizens.[2]

Aristotle drew the distinction between civil government and despotism. A State or civil society he declared to be a community of freemen, working together for the common happiness of life, under a government which is administered for the benefit of all: Whereas a despotism is made up of slaves living under administrative control, not for their own common welfare, nor in any sense for their own benefit except by the merest accident, but for the profit of the ruler.[3] In his day the great bulk of mankind had no civil or political existence whatever, but were in a state of absolute slavery, exploited for the service and gain of their masters. Christianity, wherever Christianity prevailed, eventually conquered that, and gradually removed the blot of legal slavery from the face of the civilized earth. This was accomplished by practical and theoretical resistance on a principle, upon which in the last analysis all

[1] Tennyson, *Morte d'Arthur.*

[2] Athenagoras, Book VI, quoted by Montesquieu, *Spirit of Laws*, I, p. 23.

[3] Aristotle, *Politics*, I, 7:111; 7 and 9.

advance of democracy must be based, that every man is born to the image of his Maker, with essentially the same purpose of existence.

In a later age came the expansion of vast land-tenure into feudalism, and the western world went through the experience of servants of the soil, who passed with the land from owner to owner, had a title from their labor to a bare and squalid livelihood, and were bound to serve their masters with the fruit of their labor, in time of peace; with their blood and life, in time of war. These men were practically agricultural slaves, and those were the days of serfdom, when government was by force of the strong arm. The Catholic Church in the Middle Ages made an end of that, though a form of it renewed itself in Russia and lasted down to a very modern date.

A modified form of agricultural servitude has been kept up, here and there, through unjust oppression, by great landholders. The tenant-farmers or farm-servants of these landholders might just as well be serfs, as practically they cannot get away from slavery to the soil, and live a man's full life, or any life, for that matter. Meanwhile came the absorption of the benefit of machinery by a limited number of moneyed men, the massing of capital and the development of extended credit, the centralization of production, and the exploitation of human labor therein; and behold, we have arrived at the condition of industrial servitude, before the remnant of agricultural oppression has been abolished.

Against the imminence of a servile State perpetuating this subjection the forces of freedom, both conservative and radical, were slowly marshaling, when, to the momentary relief of the oppressor, national ambitions and rivalry, territorial and commercial greed broke through the weak barrier of an artificial balance of power and let loose upon the world the late war of all the nations. In the swiftly changing phantasmagoria of national aims, motives, principles, and pretences, that have been set floating before the eyes of all, one outstanding fact has remained fixed on the screen. We must never again waste twenty million human lives over the contentions for profit of a privileged few.

The solution of this problem has awakened a renewal of interest in constitutional readjustment of States, whose framework has been strained to the breaking point in the phenomenal trials of this war. We are again face to face with a discussion of the essential constitution of civil society, and with an examination of the character and place of sovereignty. Indiscreet friends[4] of the oppressed and foes of unjust privilege have flown in haste to Jean Jacques Rousseau, and invoke again the *Contrat Social* with its false establishment of political society by *conventional* compact, and its fantastic concept of sovereignty as an amalgam of all wills in one, in such fashion that government is only the organized doing of what ultimately we all want to do, whether right or wrong, good or bad. Meantime with an undying memory of the horrors of the French Revolution, conservative minds flee from the idea of civil society owing its civil existence to common consent: While the friends of unjust privilege thrash about for some weapon with which to exterminate the idea of popular sovereignty, and of governmental accountability on earth. Neither the lurid scenes of the "Terror" nor the discrowning of an ancient aristocracy makes false the doctrines that civil society emerges into *juridical* existence by consent and that sovereignty may be found in the people, no more than the fervid rhetoric and the brilliant style of Rousseau made them true. They must stand or fall by definition and proof.

I.

Rousseau's social contract gives judicial existence to the body politic as a distinct moral person by "the total alienation to the whole community of each associate with all his rights."[5] The doctrine of that contract is primarily false because no man can, even juridically, alienate himself, *i. e.*, his personality, nor all his rights. For a man's person is the subjective term of imputability. If a man could alienate that, he would no longer be responsible for his individual actions, nor for his individual

[4] Belloc, *The French Revolution*, London, 1911.
[5] Rousseau, *Contrat Social*, I, 6.

part in carrying out God's plan of creation. A man cannot thus throw on civil society all his personal responsibility to his Maker. No more can a man surrender all his rights. For some of them are an inalienable accompaniment of natural Divinely-imposed duties which the individual cannot fulfil, if he be without the aforesaid rights. A surrender of these would be of a piece with a dishonest debtor's transfer of all his property to his wife. It is true that Rousseau further on in his work wishes to qualify that total and absolute surrender, so as to leave with the individual the rights for which the State has no use;[6] but the withdrawal will not stand, for he has already gone the whole way[7] and made the social contract the foundation of all right and duty, leaving no right or duty antecedent to it, and thus cutting the ground from under his own feet. For with all other prior duties of man he eliminates by necessity that of keeping a contract; so that the present one loses all binding force.

Secondly, the contract as described by Rousseau is purely conventional,[8] *i. e.*, arbitrary and artificial; it is not the result of any natural impulse nor under any precept of natural law; its content is not determined for it by the natural law. Yet civil society is as natural as the family; man's natural tendencies are equally strong towards it; it is equally necessary for God's full plan; it carries a like obligation upon mankind to establish it; its essential elements, juridical as well as others, are determined by the nature of the case, and hence are prescribed by the natural law, so that, if consent is to establish its existence, it cannot be the arbitrary and artificial consent of a conventional contract. Why, the thing would be revocable at will, and could give no stability at all to our political existence: whereas obviously civil society, if not as indissoluble as matrimony, must at least be fundamentally stable.

Moreover, if the social bond were Rousseau's contract only, it could bind no one not a party to the contract, and would

[6] *Ibid.*, II, 4.
[7] *Ibid.*, I, 8.
[8] "The earliest of all societies, and the only natural one is the family, . . . and the family itself is only kept together by convention." *Contrat Social*, I, 2.

have to be renewed by each successive generation—a consequence which does not escape Rousseau[9] himself. Yet, the essential continuity of society would thus perish utterly.

Furthermore, the contract as explaining the origin of sovereignty destroys the very idea of sovereignty itself. Rousseau states that sovereignty is an absolute power in the body politic, *i. e.*, in the moral person of the State as constituted by the civic compact, over all its members, when directed by the general will; that an act of sovereignty is an authentic act of the general will, an agreement of the body with each of its members, in a word a general convention.[10] He had already laid down that there is no lawful authority among men except what is based on conventions.[11] Now, with this concept of sovereignty as a blend of all the wills of the community, its binding force or obligation would come by way of each individual's consent to the original compact. This compact virtually enduring, every man, by his original consent, either antecedently bound himself by each law of sovereignty, or else bound himself, then, to consent anew to each law, in due course. But the human will properly never binds itself. It may consent to obligation, as it does in making a contract; but the obligation comes from the will of one higher up, from authority, from prior law. So just as the consent to the original contract does not itself properly bind, neither does it found an obligation, except in the supposition of prior existing law, right and duty. Moreover, if, in order to save obligation, we presume (as Rousseau does not) the existence of the natural law and the authority of God binding us through the natural law to keep our just contracts, we still (in Rousseau's concept) eliminate all idea of authority (*i. e.*, all superior right to bind the will even of the reluctant) resident in civil society itself. This is precisely what Rousseau wishes to do; but despite that, this higher power has been insisted upon in the past, and is insisted upon in the present by the common sense and practice of mankind.

Nor is this all. Reason shows us the truth of the lesson of

[9] *Ibid.*, I, 4.
[10] *Ibid.*, II, 4.
[11] *Ibid.*, I, 4.

St. Paul that "there is no power but from God."[12] Power over the free will of man is nugatory without obligation, and ultimately only the Maker of man, who gave him his freedom, can, of original right, limit its exercise. In point of fact He *must* limit the exercise of human freedom according to the exigencies of purpose for which man was made. All obligation is ultimately from God; all right to impose obligation (*i. e.*, all power) is consequently from Him. No man can sanely deny the Creator absolute right of both property and jurisdiction over His creature. None other can rule that creature except with power derived from on high. Of course Rousseau might have said that the power which men have over their own wills comes from God, and that when these wills are merged, the merger is still from God. As a matter of fact he did not say it. Though doubtless he conceded man to be God's creature, he had no concept of God conceding, by law, to man his rights over his own will. However, even that modification in his concept would not save the entirety of philosophic truth in the question: for civil authority is something more than a complex of individual rights over individual wills, and, as we shall see later, must come from God to civil society immediately.[13]

For the moment we must call attention to the fact that this combination of citizens' wills would have no power of life and death in the community, for no one puts into the merger what he has not got, the right namely of direct disposal of his own life, much less of that of his fellow. Rousseau realizes this difficulty and labors in vain both to make a man's prior consent to his own possible execution the only indirect disposal of his own life, and to turn a criminal into an enemy at war, in the hope of finding a right to kill him as an unjust aggressor inevitably to be killed to save one's own life as well as the lives of our fellow-citizens.[14] Rousseau proves quite well that civil society should have the right of life and death; but he does not prove what he should prove and what he set

[12] Romans, xiii, 11.
[13] *Infra*, pp. 23 sqq.
[14] Rousseau, *Contrat Social*, II, 5.

out to prove, viz: That individuals had that right and transferred it to the community.

The same difficulty arises with regard to all punishment for crime, as distinguished from reparation for damage. No individual can prove his right to punish his neighbor; and though Locke, to save the situation, insisted that in the state of man prior to civil society the right of necessary punishment was in every man's hands, he never proved the assertion.[15] It is a right of God, which we cannot claim to share without showing clear and evident title, and there is none forthcoming to the individual, though there is for the State. To be accuser, witness, judge, and executioner, all in one, against one's fellow-citizen is more than we can expect the wisdom and justice of God to have conceded to every poor, selfish, passionate man, even before civil society arose. Now if the individual never had the right, no number of them can confer it upon the State.

Finally, distinguishing between sovereignty, which is power, and administration, which is but the execution of sovereignty's laws, Rousseau's sovereignty of permanently amalgamated wills leaves no civil power possible except in the moral person of the community. That reduces all just forms of government to one, that of absolute democracy; makes the authority of all officers of the State merely illusory, reducing them to mere agents of the popular will with no power to bind or to loose in any act whatever. Now though an absolute form of democracy is one of the just forms of government, and in a small community may be prudent and practical, the rejection of all serious entrusting of authority to any one distinct from the moral person of the whole community is an exaggeration, which would make political philosophy ridiculous, as it would make political government on any extended scale merely nugatory. Even the subjection of princes and officers of State to the arbitrary recall of their commission and power, while more than the safety of the people from oppression requires, at the same time nullifies the possibility of stably preserving peace and promoting prosperity, the very purpose for which God ordains and man institutes civil society.

[15] Tozer, *Rousseau's Social Contract*, Introd., p. 20.

Summarily our indictment comes to this, that the social contract of Rousseau as a juridical foundation of civil society is a juridical contradiction in terms, and that his concept of sovereignty contradicts common sense and common need, perverts political philosophy, ignores the supreme rights of God, while aiming to safeguard the rights of man, and makes insecure in civil society the very justice, peace, and prosperity, which Rousseau was on fire to restore.

II.

Rousseau has been truly said to have been the first to popularize with the masses the emancipating theory of civil society by consent, and of sovereignty ultimately in the people, which in substance and more consistent coherence had long been a possession of the schools of political philosophy.[16] Janet did not hesitate to write that "It would not be altogether inexact to say that in the Middle Ages it was in the cloisters that the doctrine of the sovereignty of the people was born."[17] The two ideas, however, that of the Schoolmen in the monastic schools and that of Rousseau in the Paris forum have essential divergences, such in fact that though Rousseau might have brought himself to accept the Scholastic idea, the Scholastics could never have accepted Rousseau's variant.

The diffusion given to the idea of society by consent, by the writings of Rousseau has obscured the fact of its hereditary descent. Rousseau frankly acknowledges his obligation to Locke, who preceded him by a century.[18] Locke in his "Second Treatise of Civil Government" had taught that civil society is juridically established by a covenant of the people, which compact the law of nature obliges them to observe; but the law of nature on the other hand justified sovereignty in the government only as limited by popular contract. Locke made sovereignty consist in the rights, which every man has over his own actions, conceded by compact to the government, according to the measure of exigency for the common welfare. Hobbes

[16] Tozer, *Rousseau's Social Contract*, Introd., p. 2.
[17] Janet, *Histoire de la Philosophie Politique*, II, II, p. 297.
[18] Tozer, *ibid.*, quoting Rosseau's *Letters from the Mountain.*

had anticipated him on the initial social existence by consent, but Locke, though he avowedly builds on Hobbes, departs from him on the character of sovereignty, and adheres with frank avowal to the teachings of Richard Hooker.[19]

Hooker, a century still earlier, in his "Ecclesiastical Polity" had made men pass from subjection solely to the natural law into subjection to law politic by "an order expressly or secretly agreed upon touching the manner of their union in living together. The latter is that which we call the law of the common weal."[20] He adds that all public government of whatever kind arises from deliberate advice, consultation and composition between men, and that sovereignty resides ultimately with the people.[21] Now curiously enough, though Hooker may seem unaware of the chorus of Catholic theologians, who in his time were defending, against the Divine right of kings, the origin of society by consent, and the primary reception of sovereignty by the people (*i. e.*, the whole community), his indebtedness to St. Thomas Aquinas is freely admitted.[22]

Of course that does not mean that Hooker found in St. Thomas a theory of political government worked out for him along the lines he followed; but he found there and borrowed thence the development of the natural law, and specific equality of men, their coalition by natural impulse into society, and the origin therein of political law. Moreover, he found sufficiently indicated the juridical causality of consent for the existence of civil power in its actual existence is, in a sense, of human accepts with approval St. Augustine's definition that a political society (a people) is essentially "a multitude united by juridical consent (or by agreement in law, the words being *juris consensu*) and community of interest."[23] So too, St. Thomas insists that civil society in the "*Summa Theologica,*" where St. Thomas right and not of Divine.[24] In fact he adds that the reason why

[19] Tozer, *ibid.*, pp. 20 and 24.
[20] Book I, quoted by Tozer, p. 13.
[21] Tozer, *ibid.*, p. 13.
[22] Tozer, *ibid.*, p. 13.
[23] *Sum. Theol.*, II, II, q. 42, a. 2.
[24] *Ibid.*, q. 10, a. 10.

God chose her kings for Israel was precisely because Israel was under an exceptional regime, a theocratic constitution.[25]

Furthermore, St. Thomas places the essential note of sovereignty, namely, the legislative power, in the people or in the vicegerent of the people, and assigns a reason for it, that legislation is the necessary direction of means to the end of civil society, and that, whereas the end of civil society belongs to the people, the direction also of means to that end must lie with the people.[26] This position he enforces in his defense of custom prevailing as law. Distinguishing with Aristotle between a community free and independent and one that is dependent, he declares that in the former the custom of the people is the will of the people, and the people have the power to make law; whereas the prince, against whose law the custom may conflict, has the power to make law only as the vicegerent of the people.[27]

Moreover in his defense of the theocratic constitution of the people of Israel, prior to the question of what form of government may be best, he lays down the general principle that for all good governments it is requisite that the people have a share in sovereignty. He then adds that the best form of government is that wherein the people retain the right of electing its rulers from out of the people.[28]

From St. Thomas to Aristotle, though a great leap in point of time, is a short step in philosophic heredity. In fact in support of the last position we have cited from St. Thomas. The latter refers us to the "Politics" of Aristotle.[29] Janet insists that the principles of Aristotle are altogether favorable to sovereignty of the people.[30] Indeed, if one will run even cursorily through the "Politics," he cannot escape that impression. Aristotle lays down that a State (*civitas*), a body politic (*politeia*), is a society of freemen.[31] The government of a household is monarchical, while in civil government power belongs to all.

[25] *Ibid.*, I, II, q. 105, a. 1, *ad* 1.
[26] *Ibid.*, I, II, q. 90, a. 3.
[27] *Sum. Theol.*, I, II, q. 97, a. 3, *ad* 3.
[28] *Ibid.*, q. 105, a. 1, *in cor.*
[29] *Comment. S. Thom.*, in II Pol., lect. 1; III Pol., lect. 5.
[30] Janet, *Histoire de la Politique*, I, II, 2, p. 297.
[31] Aristotle, *Politics*, III, 6.

"There is one rule," he says, "exercised over subjects who are by nature free, another over subjects who are by nature slaves; the rule of a household is a monarchy, for every house is under one head; whereas constitutional (*i. e.*, political or civil) government is a government of freemen and equals."[32] All citizens have in a sense a claim to civil power.[33] Rulers and subjects are from time to time interchangeable, because all are equal (*i. e.*, politically).[34] A citizen is one who shares in governing and being governed.[35] The government is everywhere sovereign in the State, and the constitution is in fact the government.[36] But a constitution is an organization of offices, which *all the citizens* distribute.[37] Forms of government are of several kinds according as the power is thus distributed.[38] Absolutely speaking, if an individual happens to be so eminent in virtue as to surpass all others, it is just enough that he should be king,[39] but always by the choice of the freemen who constitute the State.[40] In every form of government the majority (or, as St. Thomas translates it, the many) ultimately rule.[41] None of the principles on which individual men actually claim to rule, and *to hold other men in subjection,* are strictly right.[42] Sovereignty of the people is in principle susceptible of a satisfactory explanation, and, though not free from difficulty, seems to contain an element of truth.[43] Extreme democracy, as a form of government, must recognize law as supreme, and concede real authority to its magistrates.[44]

From all of this it would appear that the essential idea of civil society constituted by consent, and of fundamental sovereignty in the people, has come down to us from a respectable

[32] *Ibid.*, I, 7.
[33] *Ibid.*, III, 13.
[34] *Ibid.*, III, 13.
[35] Arist., *Pol.*, I, 12 and II, 2.
[36] *Ibid.*, III, 6.
[37] *Ibid.*, IV, 3.
[38] *Ibid.*, III, 7.
[39] *Ibid.*, III, 17.
[40] *Ibid.*, IV, 3.
[41] *Ibid.*, IV, 4.
[42] *Ibid.*, III, 13.
[43] *Ibid.*, III, 11.
[44] *Ibid.*, IV, 4.

source, however tangled and untrue the exaggerated notions thereof may have become.

The idea was indicated in Aristotle and outlined in St. Thomas; but it was only when there took place the great contention between the Empire and the Church, between the civil power of kings and the ecclesiastical power of the Papacy, that the controversy arose which led step by step to the fuller development in the Catholic schools of the juridical origin of civil power. From the middle of the sixteenth century both of the great palaestras of Scholastic theology, the Dominican and the Jesuit lecture halls, freely taught what in the seventeenth century Suarez so brilliantly defended, to wit, that civil sovereignty was through the natural law directly received from Almighty God by the people, and thence entrusted to the rulers of the State by constitutional consent.[45]

III.

In the origin of civil society in the concrete among men we must distinguish at the outset between the historic causes that variously brought men together in cities and States, that determined them to live submissively under patriarch, king, conquering general, or beneficent statesman, as their political head, and the juridical title or foundation, in view of whose exigency the natural law bound men together in concrete civil unity, into a moral and juridical civic entity, and ratified the establishment of power in the hands of a legitimate ruler. No one in reason doubts today that whatever was the historic cause that diversely in diverse cases brought man and woman together in a family relation, whether it was by purchase or forcible seizure, by paternal gift of the woman, by maternal wiles, by feminine witchery or by lover's ardent suit, the juridical title has been and is unchangeably the same, viz, mutual consent to the marriage bond. Similarly diverse instances of civil society may have had their historical origin under variously divergent circumstances, under the influence of distinctly diverse causes, of patriarchal expansion, for instance, or clan accretion,

[45] Arist., *Pol.*, III, 11.

of conquest in war (just or unjust), of combination for defense or for trade, of colonial establishment or revolutionary reform; but in each and all cases we seek the juridical foundation to civic or political unity, the title to be recognized as a juridical State at all, and we declare it always to be popular consent to the civic bond.

For a State, a political unit, a civil society, is admitted to be a moral union of families and individuals for a naturally set human purpose. A union must have a bond, a moral union a moral bond. A moral bond must bind the free acts of men, the only acts which can be moral; and the only true binding force on our free actions comes from the obligation of law. The obligation, however, of no law touches man in the concrete without a foundation in fact. Hence for every moral bond we must find such fundament or title; and for the union which constitutes of men a civic body, we must find not merely the historic causes or the occasions of its existence, but the juridical foundation of the civic bond. This we maintain to be consent. In like fashion we are in search not of the history of how this or that ruler came to establish himself and exercise civil power; rather we are looking for his juridical title to the rights of sovereignty. We assert that this is the constitutional consent of the people, with whom lies original and fundamental sovereignty.

To come at this scientifically we must take a summary view of the natural problem of human life. God made man ultimately for an abiding union of knowledge and love of Him, in everlasting enjoyment of His truth, goodness and beauty; in which union we find God's eternal glory and man's eternal blessedness. God set man on earth for a period of existence until death, to fulfil His plan for the development of human life thereon. That development was to be a demonstration of Divine excellence latent in the powers of man and nature, and in human capacity to learn the control of the powers of nature. This demonstration, while it makes man "witness of the glory of God," as Ruskin has called him,[46] likewise shows him growing in the knowledge and love of God through His creatures—

[46] *Modern Painters*, II, 3.

which constitutes the highest glory of God upon earth—and in its achievement, the temporal happiness of man. The connection between God's ultimate purpose and His earthly plan, between man's service on earth and his enjoyment after death is one of merit. Man is to merit beatitude by service on earth, in the development of life as planned by God. God has put in man and in nature the capacities for this development, has imprinted on them the necessary impulse towards it (in human reason by the natural law, in all things else by the laws of nature), and has left man in manifold need of the very steps that lead him on. Man, learning from his natural powers, his specific impulses and his cognate needs, the details of God's plan in his regard, in consequence recognizes therein the details of God's law bidding him carry out the details of the plan. In carrying these out *as bidden* man gives that final touch to his life development, which is imputed to him for merit of the happiness of the life that is to come.

Pursuant of his way towards the natural development of his life powers, man comes to recognize that the family relation has place in the fulness of the Divine plan of human life; and when he enters into that relation, he is normally conscious both of an obligation of the natural law binding him to all the necessary conditions of that relation as bearing on the purposes of human life, and is conscious at the same time of rights which the natural law gives him unto the fulfillment of that obligation and the promotion of life's purposes. We know this definite, specific compound of obligations and rights as the marriage bond; its obligations give it the name; but its obligations on the one side involve rights on the other, and vice versa, and the two combined integrate the juridical connection. As a set of duties and rights, of obligations and moral powers, it has its source in God, whence it descends through the natural law. As incumbent on any man and wife in the concrete, no one denies today that it comes into existence by consent. As to the nature and force of its obligations and rights, it is of Divine right; as to concrete existence it is of human right. The principle of the bond is the natural law; but the foundation of its presence in this or that concrete couple is consent.

The next step in social consciousness is that men realize that in the mutual assistance of family life alone they cannot develop human life in its fulness; they cannot attain, as Aristotle says, "the good life," that is, the perfection of life. They become acutely aware of the power, impulse, and need they have, bearing on what we call civil society, for the development of life's full faculties, physical, mental, and moral. They enter in due time upon this social relation, forming a unit from which they demand the protection of rights and the promotion of opportunities—not merely economic, but in every sense human—for a full life development, in the active achievement and enjoyment of which may normally be found man's temporal happiness. In this second natural and juridical social unit the elements are held together by a civic bond, embodying all the essential obligations of co-operation, and all the essential rights of social protection and opportunity. These essential obligations and rights are not the arbitrary choice of men. They are determined by the natural purposes and exigencies of such civic coalescence. The civic bond, like the marriage bond, is a definite, specific compound of obligations and rights.

The binding force of this bond also comes from God through the natural law. But what actuates it in this or that group of families, this or that multitude of men, in the concrete? Why not their consent? Consent is enough to actuate the conventional bond of a business partnership between man and man, of a commercial treaty between nation and nation, of a natural union between man and wife. There is no assignable reason why it should not suffice to determine the social union of citizens under the civic bond. In fact there is explicit reason why it should do so.

If we push on to see why ultimately neither the authority of parents, nor the weight of law, nor the obligation of conscience, can make man and woman husband and wife without their consent, we find that the marriage relation calls in its continuity for such a union of wills, in constancy of mutual love and common effort, as cannot be hoped for unless the bond is voluntarily accepted by an act of personal freedom. If we then consider the demand for union of wills, of co-operation,

of sacrifice, of mutual civic altruism in peace and war, to be found in the continuity of the civil relation, it is easy to see that it is unreasonable to expect it, unless the constituent elements ultimately come to accept voluntarily the civic bond and its necessary consequences. You may subject a people by force; you may subdue its spirit by oppression; you may maintain supremacy over it by the craft of subtle tyranny; but you can never have a civic unit working out by co-operation the real happiness of all, unless the people come at one moment or another to accept the situation by consent.

When a multitude of people come to grasp, however dimly, the natural life-purposes incumbent upon them (purposes in themselves supremely desirable as well), come, moreover, to apprehend the obvious fact that only in civil union of a concrete society can these purposes be achieved; that this union implies a bond binding each of them, a bond bearing with it definite common civil duties and civil rights for all, they have certainly arrived at the threshold of a juridical union. In all other cases of juridical union contingent upon common action, in all other cases of natural and mutual obligations so contingent, as well as in the case of acquired natural rights over definite means to a natural end, the next step is a free act of the will, and the thing is done. In perfect parity, if the multitude there and then accept the bond in question, you there and then have in existence a new juridical entity, a juridical union, which men call civil society. They may have been entirely free to consent, or for one reason or other may have been morally bound to consent; they may have consented in written instrument or spoken word; in the cheerful enthusiasm of subordination and co-operation, with neither written or spoken pledge, or in the silent omission of all protest and repudiation, when such protest would be efficient or a matter of duty; they may have consented all together, or group after group yielding in course of time; they may have consented to the entirety of the bond at once or by degrees to the different duties of its content. It matters not. The one substantial thing in the establishment of a State as of a family, in joining a civic unit together with the civic bond as in joining a family unit with the marriage bond, is

the voluntary and free consent of those who establish the union.

The consent of the community then is the fact which of its nature spells an exigency that the natural law should supply the essential juridical ingredient there and then necessary for the natural function and juridical cohesion of civil society; and that is, after all, what we understand by a foundation, a juridically determinant cause of the existence of that juridical effect, which is found in a multitude, when, instead of remaining an incoherent assembly of discrete atoms, it is bound together into the social union which we know as a body politic or a State. It is indeed the only fact that accounts juridically for that union, just as consent is the only juridical cause that accounts for the juridical existence of a marital union. Vicinage does not do it, nor kindred blood. Common needs may be a motive of consent, and even, in a conceivable case, extreme enough to give rise to an obligation to yield the consent; but of themselves they do not place the consent, nor sufficiently substitute for it in placing the social bond. Such conditions will not suffice in the case of the matrimonial union. Why should they in the case of the more extensive and complicated unit? Patriarchal descent, occupancy of the territory of one and the same landed proprietor, subjection by conquest, none of these are claimed to be sufficient juridically to make a discrete multitude into a civil community, except in so far as the patriarch, landholder or conqueror has *ipso facto* sovereignty over those who fall under the respective categories correlative to each of them. But we shall proceed at once to show that sovereignty needs a firmer ground, lies originally with the people, and is found derivatively elsewhere only by the people's consent.

IV.

When men in the fulfilment of God's plan establish the juridical person of the body politic by their consent to this juridical union for the general welfare, the natural law necessarily concedes to that person in the very bond, which creates it, all the rights and powers necessary, and even those connaturally proportionate, to the purpose of the common weal. The powers

essential to each and every State will be congenital rights of the body politic. If we conceive the thing as in a condition of juridical genesis, we ask ourselves, What are the first powers that body needs? The answer is the power to organize itself under a definite form of government of its choice; the power to choose the individuals in whom the governmental powers are stably to reside, to determine the stable limitation of these powers by reservation of power to the community itself, and the method of succession in their possession; the power to govern the community *ad interim* either directly or by the appointment of provisional governors; the power to reorganize the government, whenever its prior organization, whether from forces within or without, goes to pieces, or permanently fails to function *for the general welfare,* or in new times and circumstances fails to meet *the exigencies of the common weal;* the right, finally, to be the authentic judge of conditions requiring organization. I fancy we need not elaborate the point that substantially these powers are from the start requisite to the essential purpose of civil society; nor that by reason of God's ordering human society in His plan of human life, and by natural consequence of men putting one such into existence, this society has the above rights and powers. They are as obviously involved in the content of the civic bond as are all the rights and privileges necessary to the natural purpose of marital life involved in the marriage bond.

These powers may be and sometimes are called constituent powers, authority to enact a constitution or fundamental law, a law, namely, in which the organization of the government is provided for as above, and the reserved powers of the community declared. In point of fact that is what is meant by popular sovereignty, that is to say, the sum of supreme jurisdiction necessary to provide the organization and government of a State, as inherent in the community as a body politic, a moral person, from the first instant of its juridical existence; jurisdiction coming from God through the natural law in the civic bond which makes of a multitude a people, a community, a State. It is quite evident that such sovereign powers exist in some person or other within the range of the community, but

the contention for popular sovereignty is that they are to be found in the moral person of the community itself.

It may appear that what is commonly known as sovereignty, the supreme powers, namely, in a sovereign, whether he be tsar, kaiser, or king, a class of nobles or a republican president, is not quite the same as the constituent and other powers above enumerated. That is true, though not in a sense as mutually exclusive as might be apprehended. Sovereign powers, as they exist in actual rulers, are the sum of jurisdiction necessary for actual normal government, stably set indeed in the rulers in order so to govern. They suppose then a determinate form of government, definite rulers and definite powers and a determined mode of succession; and finally they imply the possession by the rulers of the fulness of authority necessary for their function; whereas on the other hand the sovereignty attributed to the people *seems* rather made up of preliminary powers of organization, and not of powers to govern at all. That is a mistake. Popular sovereignty is both one and the other. As a matter of fact the community has in itself all the powers of governing provisionally in the interim of organization; may organize, if it so choose and the thing is expedient, a purely democratic form of government, and so retaining all its powers may stably govern the State. In one word original sovereignty as in the people includes the governing powers as well as the powers of organization. Outside of an absolute democracy the people entrust the governing powers to the rulers, retaining the organizing powers for the emergency of necessary reorganization.

The important question demanding a convincing reply is, Why should these powers appear first in the people, in the community itself? The metaphysician would answer: "*Natura non deficit in necessariis,*" which the jurist translates, in terms of ethics, that God lays no natural duty or function upon any person, moral or physical, without naturally (*i. e.*, through the natural law) communicating to that person all the powers necessary to the discharge of the said duty or function. Now it is quite evident from what we have said above [47] on the place of

[47] *Supra,* p. 19.

civil society in the Creator's plan, that on the person of the body politic, once existent, are naturally incumbent the duty and function of providing for the purpose of civil society, for the security of rights and for the promotion of civic opportunities, in a word, of directing civic co-operation to civil society's specific welfare. It is equally clear that such provision, such direction of co-operation, cannot be had without the possession of all the moral powers indicated above as the content of sovereignty. Nor will it answer this exigency to say that such powers must be somewhere within the limits of the community, but not necessarily be the powers of the people as such. For, as St. Thomas insists, "in this matter, as in everything else, to him is given the power to order the means to the end, to whom that end properly belongs."[48] Now the end of civil society does not properly belong to any individual person, or individual group of persons in preference to others in the community, but to the community as such, to the people as a body politic, a moral person. It is the community's common weal or general welfare, which is the goal of civil society, an axiom recognized from Aristotle down.[49]

Natural rights are to be found in no person except in consequence of natural title, of natural exigency of those rights with a view to the natural purpose of life. Our congenital rights are the same in all of us, for their title in human nature, and that belongs alike to each of us. Rights other than congenital are acquired as we become possessed of contingent title or exigency thereto. The exigency for civil sovereignty does not naturally arise in any man, or any individual group of men, but only in a body politic; for it is a naturally necessary means only to an end proper only to a body politic. The natural exigency in any person whatsoever outside of the body politic regards only a private and not a public purpose, and springs from a relation of commutative justice between independent equals or domestic justice in the bosom of a family; whereas rights of civil sovereignty come into existence only for

[48] *Sum. Theol.*, I, II, q. 90, a. 3, *in corpore articuli;* quoted above in Note 25.

[49] *Politics,* VII, 9; III, 7 and III, 9.

a public purpose, the common good or general welfare, and connote a relation of civic legal and distributive justice. A public purpose is naturally proper only to a public person, to the person of the State; and the proper juridical term of civic legal justice as well as the proper juridical subject of civic distributive justice is to be found only in the person of the commonwealth, or in that person's representative as such.

Naturally enough the position here taken has been controverted. I fancy that the landed aristocracies would wish to controvert today, and maintain that where one-half of one per cent of the inhabitants of a country own all its land,[50] and are thus in possession of the ultimate source of its wealth, it should govern the community, because it has most at stake in the community. This would be to argue that the title to power over the general and public welfare of society is to be found in the individuals who have the largest material interests of private ownership; and here the capitalist, the banker and the money-lender would contest the landlord claim. The only way one could twist a title out of that would be to say that he must necessarily have the care of the public good, to whose private gain that good is subordinated by nature, as a means to an end. Nature never yet subordinated one man's natural good as a means to another man's aims, let alone the natural welfare of a whole people to an individual's private profit. The thing savors of slavery.

Originally, doubtless, civil government began under the headship of the patriarch of the clan; and paternal rights in the father were a prelude to civil powers in the first patriarch, which descended from him through eldest sons, so that at any given time claim to the possession of sovereignty was based on primogenitary descent from the first sovereign, who could be historically proved to have ruled over the nation.[51] To conclude from that historical fact that the original natural title to sovereignty is in extensive paternity is a far cry. It involves that by natural law civil sovereignty is absolute in the actual ruler, limited only by the demands of the common civic good; and

[50] Cf. J. Murphy, *Dictionary for Social Students*, p. 33.
[51] Aristotle, *Politics*, I, 2; Hallam, *Literature of Europe*, III, p. 160.

that both in origin and transmission it is entirely independent of the consent of the people. But a father's right to govern his son cannot be proved out of any natural exigency—such as that by which it is proved to exist at all—to extend beyond the adult maturity of the son; and when the latter founds his own family, his parental rights are as strong and exclusive over his own family as his father's is over his, and so every head of a family. The general welfare, which is the reason of the existence of civil power, cannot be said to be, by the natural law, properly and peculiarly the patriarch's; nor his permanent care, unless you extend a man's responsibility (in the matter of life-purposes) for all his progeny to the *n*th generation; nor his purpose and profit, unless you make all his descendants his slaves. It is the common profit, the common benefit, and it is to be put before the profit, benefit and happiness of the ruler.

Nor is the patriarch's case strengthened by the fact that he has the added title of landlord over the entire territory occupied by the clan, and can extend his right of property over wide lands to territorial sovereignty, and then to civil jurisdiction over the tenants and all inhabitants of the aforesaid territory. This really weakens the case. For though a patriarch's feeling for his blood descendants might be a reason to expect him to set the general welfare above his own, yet the landed proprietor owns land for his own profit, and in the administration of it, and of any government of the occupants thereof, would naturally consider his own proprietary rights and gain first, and the welfare and rights of tenants in an entirely secondary place, and much as means to the former. History justifies our argument against him, for the landlord government has been a mockery of civil government as primarily for the benefit of the governed.

How then, if we do not admit the patriarchal or proprietary title to civil sovereignty, are we to account for the obvious fact that historically this sovereignty obtained was exercised in many places and in many cases with a measure of beneficence? We answer, by consent or usurpation. Why men would naturally consent to patriarchal rule and find it beneficent, and how civil rule might be usurped and turned to oppression is well

expressed in a passage of Aristotle, which, while a summary of the past before his time, savors of a prophecy of the centuries that were to come.

> The first governments were kingships, probably for this reason, because of old, when cities were small, men of eminent virtue were few. They were made kings because they were benefactors, and benefits can only be bestowed by good men. But when many persons equal in merit arose, no longer enduring the pre-eminence of one, they desired to have a commonwealth, and set up a constitution. The ruling class soon deteriorated and enriched themselves out of the public treasury; riches became the path to honor, and so oligarchies naturally grew up. These passed into tyrannies and tyrannies into democracies; for love of gain in the ruling classes was always tending to diminish their number, and so to strengthen the masses, who in the end set upon their masters and established democracies. Since cities have increased in size, no other form of government appears to be any longer possible.[52]

The contention that the patriarch and his primogenitary descendants are by nature and natural circumstances so evidently better fitted to govern than any other member of the community as to be thus indicated by nature (on a par with the father in the family) as the natural recipient of sovereign power is both in theory and in fact of so tenuous a texture that it needs but the breath of denial to disrupt it. The whole question in a nutshell comes to this: Whose rights and interests are paramount, the community's or those of the patriarch and his primogenitary descendants; and on whom has the natural law put the duty of the life-development of the community in the plan of God, on the community or on the patriarch? The life is the life of all in the community; its development is a duty of the community; its juridical purpose of existence is precisely that. This purpose is paramount to the development, profit, benefit, or interest of any individual, and the right to it supreme.

In the sixteenth century Bodin maintained that, though patriarchs were the first civil governors, the patriarchal State had been long since overturned by force of arms, and that the sovereigns of his day should find their original title in right of conquest. Assuredly not by unjust conquest, unless we wish to

[52] Aristotle, *Politics*, III, 15 (Jowett's Translation, I, p. 100).

confound right with might. The victor in a just war may certainly exact the right or rights for which he justly went to war; but these belonged to him, conquest or no conquest. He may rightly claim indemnity also for necessary losses sustained in the prosecution of the war, as these are damages justly demanded to repair injury suffered; and one may also remark that the title to these in the court of conscience and the natural law does not suppose victory. Finally, he may demand reasonable security against repetition of the offense; but the foundation of this is the right which he has against threatened injury rather than the conquest by which he is enabled to enforce that right. Conquest in itself is but a robber's title, whether the prey be territory, booty, or men. Conditions may be conceived to be such that the conquered community cannot properly repair damage and give security except by accepting the sovereignty of the conqueror. It then may be bound to consent (at least temporarily) to such sovereignty, just as a man may be bound in conscience to marry a girl whom he has wronged under promise of marriage; but neither in one case or the other can the juridical bond be proved to arise without consent. Coercion may enforce subjection, as it may enforce cohabitation, but it does not create the natural bond without the natural title. You may make a plantation of slaves and call it a realm, but you cannot have a body politic to rule, nor authority to rule over one, except you have the foundation of consent. This of course is pushing the argument to an extreme. Suarez admitted that a conqueror could under the circumstances posited above annex territory and incorporate its inhabitants into his own pre-existing State. The territory raises no insuperable difficulty, and the inhabitants thereof may pass as alien residents under the sovereignty thus extended over the territory, but consistently with the original principle we have laid down they do not become citizen-subjects until they have consented to transfer of allegiance.

On the eve of the English Revolution of 1688 Filmer in his "Patriarch" raised a weak cry in favor of existing absolute rule, resting the thrones of Europe on patriarchal descent. In the early nineteenth century De Haller reacting against the

principles of the French Revolution[53] demolished the *"Contrat Social"* of Rousseau[54] and thought to find a justification in all nature for the principle that rule belongs to the strong, declaring that authority is to be found in him who has a superior excellence over those who have need of the benefit of that superiority, by a law of nature to which men necessarily conform.[55] He puts the sovereignty of a prince in his own particular independence, which is just in so far as it is his own private property, his subjects being those who have not achieved their own independence and owing to circumstances depend upon the superiority of the prince for their protection, help, and guidance.[56] He makes monarchy the initial form of civil government and places its sovereignty in independent superiority established chiefly by the titles of patriarch, territorial proprietorship, and military conquest.[57] Father Taparelli, S.J., with keener philosophical acumen and singular felicity of style presents De Haller's theory in the strongest shape in which an appeal could be made for it, narrowing the formal part of the title to sovereignty to a juridical superior excellence and fitness to govern to be found in the exclusive prior rights of patriarch, proprietary, or conqueror.[58] Both De Haller and Taparelli allow for an exceptional case in which independent equals may establish a form of government by consent, with the designation of the ruler by the community.[59] In its last form the theory has had the subsequent support of many conservative minds down to our own day. Yet its purpose is more admirable than its ground firm. Paternal authority, proprietary rights, and military conquest cannot transform themselves into a natural authority specifically distinct, whose purpose in God's plan is the general welfare of the community concerned, of which He laid the duty on the body politic itself.

[53] *Restauration de la Science Politique,* Introd.
[54] *Ibid.,* chap. 6.
[55] *Ibid.,* chap 13.
[56] *Ibid.,* Introd.
[57] *Ibid.,* chap. 24.
[58] *Saggio Teoretico di Diritto Naturale,* Dissert. II, cap. 9.
[59] De Haller, *Restauration de la Science Politique,* chap. 18. Taparelli, *Saggio Teoretico di Diritto Naturale,* Dissert. II, cap. 9, nn. 519-523.

Nor can any of these prior rights be said to establish a natural title to civil power. For a natural title to civil power, a title in the nature of the thing, should show special fitness, physical or moral or both, for the task of authoritatively guiding the people to the goal of the general welfare; should show it in reality and not in appearance only with something like evidence and not mere plausibility exclusively in the person claiming the power, and *per se, i. e.,* in the ordinary run of human events. These characteristics we demand in the title of a father to be head of the family, and it is only on the ground of the absence of one or the other of them that an argument can be raised to dispute the man's natural right in preference to the woman Now in the ordinary run of human events physical fitness is not pratically exclusive; nor moral fitness either for that matter. Hence the argument has passed in the course of controversy to juridical fitness from the presence of some right having a special bearing on civil power, such as the amplified paternal right of the patriarch, the right of property in a territorial landlord, the right of conquest in a victor at war. But we have to note that such rights proceed by commutative justice or domestic jurisdiction, the former of which is primarily for the benefit of the individual, the latter for the benefit of the individual family; and neither of them has particular bearing on legal justice nor do they necessarily manifest a tendency and obligation to send one's activity forth out of one's own personal circle to labor for the general welfare. The moral person of the community itself, however, is linked together by legal justice, and as such has both the natural tendency and obligation to work primarily for the common weal. We must not consider sovereignty as private property but as a public trust.

The rights of sovereignty lie where the duty falls, by the same law and precisely on that title. The duty of achieving that precise element of the Divine plan of human life, intended to be achieved in civil society, God laid on that natural moral person itself, not upon another; primarily and paramountly for its own benefit, the greater welfare, and not for the advantage of any individual. The sovereignty which is necessary to accomplish this achievement, to fulfil this duty, God through the

natural law put upon the people, the State, the civil society itself. The natural law bestows the power only where and when the exigency arises; the natural exigency for sovereignty arises only in the people, and precisely at the moment when the multitude juridically coalesces into a State. Neither in theory nor in practice will anything stay a resolute people who have the strength, from readjusting their form of government, whether a republic or a monarchy, except the fact that the government is being properly and successfully conducted for the general welfare with the protection of the rights of all and the exclusion of none from a fair opportunity to develop human life along the lines indicated by the nature of man.

This may bring the reader to ask whether by repudiating Rousseau's Social Contract and establishing society by natural consent with sovereignty as a new and distinct power descending from God through the natural law we have not reverted to the Divine right of sovereignty? Yes and no: To the Divine right of kings or other individual rulers to their sovereignty, no; to the Divine right of the people to their sovereignty, yes. The phrase Divine right (*jure divino*) signifies literally by Divine law, and in a general sense all right is Divine, *i. e.*, ultimately deriving its force from God's eternal law. "By Divine right" in a special and technical sense signifies from the law or will of God without the mediation of any human law or will, and in this sense a Divine right in a man means a right thus immediately received. Now Divine law is twofold, positive and natural; the former is over and above the exigencies of created nature and is found in the Revealed law; the latter follows the exigencies of created human nature and is formulated by human reason. The powers given to Moses in the Old Covenant and to St. Peter and his successors in the New are of Divine positive right. James I of England, the great champion of the Divine right of Kings, in as much as he claimed in his kingship the plenitude of spiritual power over Christ's Church in England, doubtless, so far forth at least, intended that his sovereignty was from the Revealed law and thus of Divine positive right, and moreover he sought to prove his theory of sovereignty from the law revealed in the Scriptures. Yet he could not well claim his sov-

ereignty as a king from that source, unless—as Suarez argued [60] —he was prepared to show that God by special revelation or by some extraordinary sign had elected him or one of his progenitors King of England.

The keener minds defending Divine right of kingship soon dropped the argument from Scripture with its insinuation of right from Revealed law, and fell back on the natural law. This left the issue of Divine right to be whether on the one hand the natural law bestowed sovereignty immediately upon the rulers either by original title, whether of patriarch, proprietary, conqueror, consent or prescription, or by derivative title from such original possessor of civil power, without in any way *deriving* said power from the people; or whether on the other hand the actual individual rulers were never *original* holders of sovereignty, but only subsequent possessors by derivative title from the sole original holder, the people. In the former case the power of kings, whether original or derived, would be by Divine right directly from the natural law; in the latter by human right *(juro humano)* of constitutional law or popular transference. Hence the doctrine of the Schoolmen was not the doctrine of Divine right for the sovereignty of actual rulers, but only for the sovereignty of the people.

Cardinal Zigliara not quite a half century ago originated the theory that while the consent of the people was the necessary title to civil sovereignty, it was not a derivative title, but an original one.[61] Hence the people was not the original holder of civil power, transmitting it to its rulers under an established form of government, but merely the sole legitimate designator of the person to possess sovereignty, who in consequence of such designation always received its power directly from God, though in virtue of popular consent. A more recent Roman authority, while conceding to the people constituent powers, defends the same view in regard to governing sovereignty, and maintains that as in virtue of the people's constituent powers governing sovereignty was by way of title at the free disposal of the people, and as it is present in actual rulers juridically by the free

[60] Suarez, *Defensio Fidei Catholicae*, III, III, 7.
[61] Zigliara, *Jus Naturae*, Lib. II, Cap. 2, Art. 3, No. 12.

act of the popular will, it must be said to be invested in the said rulers by human right and not by Divine.[62]

The principal ground in reason for this position that the consent of the people is not a derivative title is the supposition that the community as such cannot be the original possessor of governing sovereignty before determining its form of government and its stable rulers, *because* the community as a whole is not *per se* fitted by nature to possess and exercise such governing powers. The ground does not seem conclusive, and that for two reasons. First, the unfitness for possession and exercise of governing powers appear only in case of too populous and ill-educated communities; for a community of moderate proportions and of a fair amount of civil education can evidently conduct (as has been done in the past) civil government under the form of an absolute democracy. Now the fact of large size and of lack of essentially necessary civil education is a mere accident and not a *per se* condition. *Per se*, civil communities normally begin in small compass, where the essentials of civil government are sufficiently known. Secondly, even if the contrary were true, it does not follow that the natural law would not concede sovereignty to the whole community as such, even though the exercise of it necessarily postulated the entrusting of its governing powers to definite individuals under a determinate form of government. For returning to our original argument, the community as such has the duty of effecting the normal purpose to be accomplished by civil society, and in consequence has all the rights that are the necessary means to that purpose, of which the first and most important is governing sovereignty, and must exercise those rights by itself or by others (to whom it entrusts them for exercise) according to the exigencies of the general welfare. Cardinal Bellarmine found no difficulty in maintaining both that governing sovereignty was first in the people and yet necessarily to be transferred to definite rulers under some legitimate form of government.[63] Sovereignty is held by no ruler except in trust for the general

[62] Billot, *De Ecclesia*, tom. III, quest. 12, p. 21.

[63] Bellarmine, *De Laicis*, Lib. III, cap. 6, not. 3; quoted above in Note 42.

welfare, in trust for the accomplishment of the natural purpose of civil society; and certainly unless that trust were committed to the ruler by the community, the community itself would not have had original control over its own destiny, which the natural law not only supposes it to have had as a right, but has imposed as a duty.

The point is worth elaborating. To possess *per se* a right it is not necessary that the possessor be *per se* competent to exercise it by himself, but only that he be *per se* competent to exercise it either by himself or by others to whom he may entrust it for exercise. Thus the right to educate their children would still belong to the parents, even if parents were not *per se* fitted to exercise it by themselves, but were necessitated to seek competent substitutes, to whom they entrusted the right for execution. And the reason is that parents could not divest themselves of the duty and responsibility, even in the supposition that the duty was *per se* and of necessity to be fulfilled by others of their appointment. In like manner the community cannot escape the responsibility or divest itself of the duty of accomplishing the purpose for which governing sovereignty is given.

Just as the physical power of understanding belongs to the soul, though it cannot exercise it without an intellectual faculty, *which derives its power* from the soul; so too the moral power of tilling the soil of an immense estate, which belongs to an individual owner, is his, even though he cannot exercise it by himself, but must needs invoke others to exercise it for his benefit. Even the civil law can grant a transitory right to an individual *per se* incompetent to exercise it, with the added obligation of transferring it to others at his choice, that they may exercise it for his benefit and for its civil purpose.

In the contrary position taken against our general contention of original sovereignty in the people, it would follow that governing sovereignty did not actually exist in civil society prior (even by nature) to the determination of a specific form of government and the nomination of actual rulers, a proposition more easily assumed than proved. For just as a physical person immediately upon its coming into juridical existence has dominion over itself and its members, and has not to wait for such jurid-

ical dominion until the development of the faculties requisite for its exercise; so too a moral person immediately upon its juridical constitution has juridical dominion over itself and its members (and governing sovereignty in civil society is no more than this) even before the development of the organization requisite for its exercise. Nor can the force of this be evaded in the case of civil society by contending that the community, once juridically a civil unit, has the right only of *acquiring* the necessary governing dominion by determining a specific form of government and nominating definite rulers. For civil society, if at all a natural juridical person existing for the common welfare, must instantly have the right of exacting detailed co-operation from its members towards accomplishing the common good; and when all is said and done, such right and power in a civil community is essentially governing sovereignty.

To restate by way of conclusion the Scholastic doctrine which we have above set forth: The title for the juridical existence of an actual State is the consent of the people who constitute it. Immediately consequent upon this follows by Divine right of the natural law sovereignty in the people, now a juridical unit, a body politic, a moral person. Logically and juridically subsequent to this comes constitutional organization of a form of government and a determination of definite rulers, who constitute the government, the juridical and derivative title to whose sovereignty is the consent of the body politic, the people. In this sense lies the truth of the principle that "governments *derive* their just powers from the consent of the governed."[64]

[64] American *Declaration of Independence.*

Editor's Note—The subject of this chapter has received more discussion of a fundamental character during the last five years than in the preceding fifty. See Dr. Ryan's pamphlet, *Catholic Doctrine on the Right of Self Government* (The Paulist Press, New York), and the articles by Professor O'Rahilly, Dr. Fitzpatrick and Father Masterson, S.J., 1918-1922, in *Studies* (Dublin) and in the *Irish Theological Quarterly* (Maynooth).

5. THE HISTORY AND DEVELOPMENT OF THE DEMOCRATIC THEORY OF GOVERNMENT IN CHRISTIAN TRADITION.[1]

By Rev. Moorhouse F. X. Millar, S.J.

John Quincy Adams in *The Jubilee of the Constitution, a Discourse*, delivered in New York, 1839, has a statement of which more notice might have been profitably taken. He said: "The Declaration of Independence and the Constitution of the United States, are parts of one consistent whole founded upon one and the same theory of government, then new, *not as a theory, for it had been working itself into the mind of man for many ages,* and been especially expounded in the writings of

[1] The important words in this title are "Development" and "Tradition." In the present unsettled state of the world, we are too prone to forget the wisdom contained in Burke's words when he said: "The idea of inheritance furnishes a sure principle of conservation and a sure principle of transmission, without at all excluding a principle of improvement. It leaves acquisition free; but it secures what it acquires." (Reflections on the French Revolution.) But the principle of improvement presupposes a norm for discerning what in the past was true and sound, that there might be some assurance of the worth of the inheritance. Such a norm, was furnished by Vincent of Lerins in the 5th century, in his famous Commonitorium: "Is there to be no progress of religion within the Church of Christ? Certainly there can be, and great progress at that. Who is so envious of man's welfare, or so odious to God, that he would attempt to check such progress? But let it be such as to be truly an advance in matters of faith, not a change thereof. For it is in the nature of progress that in its development a thing remains identical with itself, whereas change implies that it is made over into something else. Let faith grow therefore as much and as vigorously as possible. Let there be advancement in understanding, knowledge and wisdom, in each and all, in the single individual as well as in the Church as a body. But let it be true in kind; that is, the same in dogma, the same in meaning, and with a like mind." Vincent, it is true, wrote this of faith applied to the facts of revelation; the same is true *mutatis mutandis* of reason applied to the facts of the natural order.

Locke, but had never before been adopted by a great nation in practice.

"There are yet even at this day, many speculative objections to this theory. Even in our own country there are still philosophers who deny the principles asserted in the Declaration, as self-evident truths—who deny the natural equality and inalienable rights of man—who deny that the people are the only legitimate source of power—who deny that all just powers of government are derived from the *consent* of the governed. Neither your time, nor perhaps the cheerful nature of this occasion, permit me here to enter upon the examination of this anti-revolutionary theory, which arrays state sovereignty against the constituent sovereignty of the people and distorts the Constitution of the United States into a league of friendship between confederate corporations. I speak to matters of fact. There is the Declaration of Independence and there is the Constitution of the United States—let them speak for themselves. The grossly immoral and dishonest doctrine of despotic state sovereignty, the exclusive judge of its own obligations, and responsible to no power on earth or in heaven, for the violation of them, is not there."

The age-old theory here referred to was nothing more nor less than that of the Whigs and of the Medieval thinkers and schoolmen, and what distinguished it particularly from every other contemporaneous theory was, as J. Q. Adams here points out, its distinctive doctrine on the nature and source of sovereignty. Not only was it opposed to the modern post-Reformation and Renaissance conception of the State as absolute in its power; it also differed both in itself and, as we shall have occasion to see, in the thought of all leading Whigs, from the radical unrelated theories of Rousseau and of a good number of Protestant dissenters. What is more, there is a still further point not usually made sufficiently clear by those who have recently been insisting on the historical and philosophical importance of this doctrine. It was not consent *alone* but consent involving reservations that constituted the true basis of government. Consent as a practical source of power was recognized as far back as the time of Solon. The idea is far from foreign to Pagan writers

and appears in Cicero[2] and in Ulpian. But then as the latter states: "that which seems good to the Emperor has the force of law; for the people by the *lex regia* which was passed to confer on him his power make over to him their whole power and authority."[3] Without fully appreciating the reason for this, Lord Acton very truly noted the fact that "the ancients understood the regulation of power better than the regulation of liberty. They concentrated so many prerogatives in the State as to leave no footing from which a man could deny its jurisdiction."[4]

But as Christianity was gradually accepted with its new view of human nature, reason itself educated under the influence of revelation awoke to the full and clear perception of the fact that the very nature of man demanded that certain definite and essential limitations be set to the power of the State. As Francis Lieber in his work on Civil Liberty and Self-Government well says: "we observe that the priceless individual worth and value which Christianity gives to each human being by making him an individual responsible being with the highest duties and the highest privileges, together with advancing civilization . . . developed more and more the idea of individual rights and the idea of protecting them."[5] The idea of contract between government and governed, which, as understood and developed during the Middle Ages, necessarily presupposes this more definite and enlarged view of man's essential nature, appears for the first time in practical forms in the

[2] De Officiis, I.

[3] Digest, i, 4i.

[4] *History of Freedom and Other Essays*, p. 16.

[5] 1859 Edition, p. 50. It was no doubt with the fifteenth chapter of the nineteenth book in the *De Civitate Dei* in mind that Rattier of Verona in the 8th century declared: "Note that God in the beginning when He created man said: 'Increase and multiply and fill the earth and subdue it and rule over the fishes of the sea, and the fowl of the air, and all living creatures that move upon the earth,' that you might understand that men were placed not over men but over birds and beasts and fishes; that all were by nature made by God equal in nature but that inequality was brought about by the customs of men whereby some are subject to others in such a manner that those who are better and more virtuous are under the dominion of others." Quoted in Revue des Questions Historique, vol. 16 (1874).

early coronation oath.[6] According to the early Visigothic code known as the *Forum Judicum* and framed largely by the Spanish clergy in the councils of Toledo, law is defined as "the emulator of divinity, the messenger of justice, the mistress of life. It regulates all conditions in the State, all ages of human life; it is imposed on women as well as on men, on the young as well as on the old, on the learned as well as on the ignorant, on the inhabitants of towns as well as on those of the country; it comes to the aid of no particular interest; but it protects and defends the common interests of all citizens. It must be according to the nature of things and the customs of the State, adapted to the time and place, prescribing none but just and equitable rules, clear and public, so as to act as a snare to no citizen."[7] In this same code it is also laid down that "The royal power, like the whole people, is bound to observe the laws."

Along with this idea of contract there was the clearer Christian concept of the natural law now considered as involving the *due* order founded in the nature of things and their essential relations, to which the free will of man ought to conform. In the words of St. Augustin "peace between man and God is the well-ordered obedience of faith to eternal law. Peace between man and man is well-ordered concord. Domestic peace is the well-ordered concord between those of the family who rule and those who obey. Civil peace is a similar concord among the citizens. The peace of the celestial city is the perfectly ordered and harmonious enjoyment of God and of one another in God. The peace of all things is the tranquillity of order. Order is the distribution which allots things equal and unequal, each to its own place."[8] This idea was fundamental to the whole subsequent history of Christendom and may be traced, in its application to civil society, not only throughout the Middle Ages proper, but even later in Dante's *Convivio*[9]; in Sir Thomas Eliot's book *The Governor*[10] in the time of Henry VIII; in

[6] Lingard, *History of Anglo Saxon Church*, vol. II, p. 26, 2d edition.
[7] Guizot, *Representative Government* (1861), p. 217.
[8] City of God, XIX, 13.
[9] Fourth Treatise, ch. 9.
[10] Edited by A. E. Eliot (1843), ch. 3.

Richard Hooker's *Ecclesiastical Polity,*[11] written against the Puritans in the days of Elizabeth; in the writings of Michael de L'Hospital in the time of the Ligue in France; in Shakespeare's *Troilus and Cressida;*[12] in Fenelon's *Direction pour la Conscience d'un Roi;* in Burke's *Appeal from the New to the Old Whigs,*[13] and finally in Washington's *First Inaugural Address,* where he said "I dwell on this prospect (of the future) with every satisfaction, which an ardent love for my country can inspire; since there is no truth more thoroughly established, than that there exists in the economy and course of nature an indissoluble union between virtue and happiness between duty and advantage, between the genuine maxims of an honest and magnanimous policy, and the solid rewards of public prosperity and felicity; since we ought to be no less persuaded that the propitious smiles of Heaven can never be expected on a nation that disregards the eternal rules of order and right, which Heaven itself has ordained, and since the preservation of the sacred fire of liberty and the destiny of the republican model of government, are justly considered as *deeply,* perhaps as *finally* staked on the experiment entrusted to the hands of the American people." But in early form it is found applied with primitive simplicity in the *Forum Judicum* of the Spanish Visigoths, where it was declared "God, the Creator of all things, in arranging the structure of the human body, raised the head above, and willed that thence from should issue the nerves of all the members. And he placed in the head the torch of the eyes, that thence might be detected all things that might be injurious. And he established therein the power of the intellect, charging it to govern all the members, and wisely to regulate their action. We must therefore first regulate that which concerns princes, watch over their safety, protect their life; and then ordain that which has relation to peoples, in such sort that, while suitably guaranteeing the safety of Kings, we may at the same time better guarantee that of the peoples."[14]

[11] Book I, ch. 16.
[12] Act I, scene 3.
[13] *Works,* Oxford University Press edition, vol. V, p. 92.
[14] Cf. Guizot, loc. cit., p. 219.

This insistence on the essential necessity of authority for the right ordering of society is characteristic of the Middle Ages. For the problem of the times was not liberty primarily but the very maintenance of anything approaching well regulated civil life. Yet the rightful claims of the people, or the fact that the common good is the true end of the government, is never allowed to remain out of sight. At a time when Visigothic Kings were being murdered in rapid succession by their turbulent and ambitious nobles, to the great confusion of the nation, Isidore of Seville, while deploring this fact, could still say "the ancients made no distinction between Kings and tyrants; but amongst us it has become the custom to designate by the name of tyrants the evil Kings who crush the people under the weight of their ambition and their cruelty."[15] St. Paul had declared that "there is no power but of God." But Doctors of the Church such as St. Ambrose[16] and St. John Chrysostom had made it clear that this should not be understood as furnishing any ground for arbitrary rule. Preaching within the jurisdiction of the despotic Emperors of Constantinople the latter said "Nor am I now speaking about individual rulers but about the thing in itself. For that there should be rulers and some rule and others be ruled, and that all things should not just be carried on in one confusion, the people swaying like waves in this direction and that; this, I say, is the work of God's wisdom. Hence he (St. Paul) does not say "for there is no ruler but of God" but it is the thing he speaks of and says "there is no power but of God. And the powers that be, are ordained of God." Thus when a certain wise man saith "It is by the Lord that a man is matched with a woman" (Prov. 19.14), he means this: God made marriage, and not that it is He that joineth together every man that cometh to be with a woman."[17] Whence it is clear that though authority legitimately held and used is to be recognized as coming from God the relation between the ruler and ruled is an established one founded on free agreement similar to the free contract in marriage.

[15] Revue des Questions Historiques, vol. 16, p. 341 (1874).
[16] Expositio Evang. Sec. Luc. lib. IV, 29.
[17] Epist. ad Rom.. (13.1) homil., 23.

Not only was the natural law as thus more clearly conceived, seen to constitute certain definite and essential limitations to the power of government, but this very clearness, obviating as it did any further pantheistic interpretation such as that of the Stoics and the Roman Jurists, made it possible henceforth to distinguish between what was *due* in consequence of the nature and essential relations of things, and what was open to the free determination of man within such manifest bounds of the natural order. Writing of the use among the ancients of the terms *natural law* and *law of nations,* Viscount Bryce, though unable himself to assign the reason for the fact which he notes, very truly observes that "the (Roman) jurists use the two terms as practically synonymous, though generally employing *ius naturae* or *naturalis ratio* when they wish to lay stress on the motive or ground of a rule; *ius gentium* when they are thinking of it in its practical application."[18] This confusion was due to the Stoics' pantheistic conception of reason as identified with the force behind nature which, for them, accounted for the order of the universe. Natural law was thus a sort of *vis a tergo* or instinct common to man and beasts, and the similarity in the laws of various peoples was explained as no more than a manifestation of the same instinct. But being peculiar to the nations as distinguished from animals such laws as were found to be alike, were held to constitute the *ius gentium* or law of nations.[19] But with Christianity's insistence on the freedom

[18] Studies in History and Jurisprudence, p. 585.

[19] Gaius' definition runs, "Quod vero naturalis ratio inter omnes homines constituit, id apud omnes populos peræque custoditur, vocaturque jus gentium, quasi quo jure omnes homines utuntur." Instit. II, i.

S. H. Butcher in *Some Aspects of Greek Genius,* p. 79, says: "Not until man was rescued out of the kingdom of nature and taken up into the commonwealth of God and into personal relations with the Divine Being, could he be more than the member of a social organism, or an instrument for achieving the ends of the State. Then only did a universal morality become possible and the idea of personality receive its full content." Likewise, Fustel de Coulanges, says: "If we recollect . . . the omnipotence of the states among the ancients . . . we shall see that this new principle (liberty of conscience) was the source whence individual liberty flowed.

"The mind once freed, the greatest difficulty was overcome and *liberty was compatible with social order.*

"Man felt that he had other obligations besides that of living and dying

of the human will and especially after the great Christological controversies had brought to light the true nature of personality and the consequent dignity of the individual, this confusion could no longer subsist unchallenged. Lactantius and Ambrose especially had much to say regarding the ignorance of Pagan writers concerning the natural law. The distinction between the *due* order and an order established by human agreement, is clearly made by St. Augustin.[20] In Isidore of Seville moreover we have the first explicit instance of a definite recognition of a real difference between natural law and the law of nations. The natural law is now no longer seen as in instinct but as "had by an instinct" or natural inclination of reason to detect what is "in accord with natural equity."[21] While the *ius gentium* is henceforth classed in the category of positive human law: that is, it is held to be expressive of a free agreement among men made manifest through customary usage.[22] But what is of chief importance to our question, national customs, as a result of all this, take on a new significance. Not only are they held to constitute law in the narrower sense of law, *i. e.*, law for the people; but, as a product of popular usage and consequently an expression of the people's will, they function as a rudimentary form of constitutional law and are considered

for the city. Christianity distinguished the private from the public virtues. By giving less honor to the latter, it elevated the former, it placed God, the family, the human individual above country, the neighbor above, the city." *The Ancient City*, pp. 526, 527, italics inserted.

This rather contradicts Prof. W. A. Dunning's contention that "Greek thought on this problem (of determining on what principles the relation of authority and submission can be explained and justified) in the fourth and third centuries before Christ included substantially all the solutions ever suggested." *Political Theories from Rousseau to Spencer*, p. 416. Of the ancient democracy Aristotle himself said: "It is assumed that justice is equality, that equality consists in the *supremacy of the will of the masses*, and that it is characteristic of liberty that every citizen acts as he chooses. The result is that in this kind of democracy each individual lives as he chooses or in the language of Euripedes 'as he likes it.' This, however, is a serious mistake; for the citizen *should live and live gladly* in the spirit of the polity, as such a life ought not be regarded as a bondage but rather as a means of preservation." Politics VIII, 9. And we know that even Aristotle could furnish no adequate content to "should" and "ought."

[20] City of God, XIX, c. 24.

[21] Etymolog., V, c. 4.

[22] *Ibid.*, c. 6.

as limiting and defining the terms of the agreement between the ruler and his subjects. As we saw already in the words of the *Forum Judicum*, law "must be according to the nature of things and the customs of the State." In other words the King may make laws, but none that conflict with established custom, since, as Isidore of Seville said: "Custom is a kind of right established by practice" and, "law is something established by the people."[23]

Besides all this there was the ulterior and more fundamental question of justice. A. F. Pollard in a recent work, *The Evolution of Parliament*, speaking of the motive for frequent parliaments in the Middle Ages, makes the interesting statement that "if they (English subjects) desired parliaments at all, it was for the justice therein dispensed, and not for the taxation therein imposed."[24] And another late writer, dealing with the question of government, says of the Scholastic doctrine very truly: "In the word *justice* we get the key to the whole Scholastic system. . . . The essential conception is that of justice; and it is in order to prove that justice must preside over all political relations that the schoolmen appeal to a pact (usually implicit only) between the rulers and the ruled."[25]

But before such practical and theoretic developments as Parliament and the Scholastic teaching on government could take place, that revolution in the very notion of justice had first to be effected which was brought about in earlier times by the spread of Christianity. Lactantius in the fourth century had pointed out what was radically defective in the ancient Pagan conception when he said: "It is very easy to shake justice, having no roots, inasmuch as there was then none on earth, that its nature or qualities might be perceived by philosophers. And I could wish that men so many and of such a character had possessed knowledge also in proportion to their eloquence and spirit, for completing the defence of this great virtue, which has its origin in religion, its principles in equity.

[23] Corpus Juris Canonici Dist., I, c. 2 and 5. Dist., II, c. i.
[24] Pp. 42, 43.
[25] Claude E. H. Williamson, *Democracy and Revolution*. Irish Ecclesiastical Record, Jan., 1921, p. 63.

. . . If, therefore, it is piety to know God, and the sum of this knowledge is to worship Him, it is plain that he is ignorant of justice who does not possess the knowledge of God. For how can he know justice, who is ignorant of the source from which it arises? . . . The other part of justice . . . is equity, and it is plain that I am not speaking of the equity of judging well, though this also is praiseworthy in a just man, but of making himself equal to others which Cicero calls equability. For God, who produces and gives breath to men, willed that all should be equal, that is, equally matched. . . . In His sight no one is a slave, no one a master, for if all have the same Father, by an equal right we are all children. . . . Therefore neither the Romans nor the Greeks could possess justice, because they had men differing from one another by many degrees, from the poor to the rich, from the humble to the powerful, in short, from private persons to the highest authorities of Kings. For where all are not equally matched, there is no equity, and inequality of itself excludes justice, the whole force of which consists in this, that it makes those equal who have by an equal lot arrived at the condition of this life.''[26] In this Lactantius is not professing himself a Leveller as is clear from what follows in the context. His argument is that the ancients admitted no such thing as what we now know as inalienable rights to which every individual has an absolute claim by the mere fact of his being a man. Both Christian and Pagan could define justice as that habit of mind which renders his own to every man. But they would differ in their comprehension of the term ''his own.'' In the Pagan conception, not only were all rights considered as granted and defined by the State, but that which granted could also withdraw or modify such rights at will; that is, the individual who happened to be a citizen, might rest assured of certain determined barriers against the arbitrary dealings of his neighbor, but he had no rights against the State; which in its own action and in its definition of rights remained unchecked by any consideration of natural rights. The Christian, on the other hand, knowing that man has duties transcending those he owes to society and

[26] Div. Instit., V, 15. Roberts and Donaldson's trans.

the State, realized that he has rights, both in regard to the question of their fulfilment, and in regard to the necessary means, which the State is bound in law and equity to respect and protect.

Corresponding to this difference between the Christian and the Pagan idea of justice was the correlative difference between the Medieval and ancient conception of liberty. Neither the Medieval or Pagan mind could have made anything out of the modern moon-grasping notions that originated in the Reformation. For both considered liberty to consist in the security of rights definitely known and recognized. But whereas the Pagan only thought of insisting on such liberty as was conceded him, the man of the Middle Ages judged the action of government and all its regulations in the light of such limitations as the natural law imposed. Hence the Medieval distinction between liberty and liberties,[27] the one due in consequence of natural rights, the other the result of grants, agreements and judicial decisions in the past. Equity provided for both, for as the unknown author of the *Fragmentum Pragense* expressed it, "Equity is that fair arrangement of all things which demands equal rights under the same conditions. Thus God is called equity for the reason that he so wills; for equity is nothing else but God. This temper when considered as permanently residing in man's will is called justice, and this will, when made mandatory, either by written precept or custom, is called law."[28] Moreover as the relation between ruler and ruled was held to be based on a contract, the terms of which were limited and defined by such customs and laws as owed their origin to past grants, decisions or agreements, it followed that the King could no more abrogate any of the liberties of his people than could an individual subject, unless it were by mutual consent.

Such then was the origin of the theory of government of which J. Q. Adams said, "had been working itself into the mind

[27] The mediaeval love of liberty was well expressed by John of Salisbury: "Duae causae sunt, quas homines affectuosissime tuentur et quas proponunt animabus suis altera libertatis, altera fidei et religionis." Ep. 192, *ad.* Ep. Exon.

[28] For the original Latin see A. J. Carlyle *History of Mediaeval Political Theory,* vol. II, p. 10.

of man for many ages." In the development that ensued, the work is again that of the Church. In Maitland's words: "It is by 'popish clergymen' that our English common-law is converted from a rude mass of customs into an articulate system, and when the 'popish clergymen' yielding at length to the Pope's commands, no longer sit as the principal justices of the King's court, the creative age of our Medieval law is over."[29] And again: "English law, more especially English law of civil procedure, was rationalized under the influence of the Canon law."[30] In the twelfth century Ivo of Chartres in his handbook of Canon law repeats the definition of Isidore of Seville that "Law should be *honesta*,[31] just, possible, according to nature, conformed to the customs of the country, suitable to place and time, necessary, useful, clear, also, so as not to contain anything which by its obscurity might lead to wariness, it should be devised for the common good of all the citizens and not for the private interests only of some individual."[32] Treating of the question as to whether custom can obtain the force of law, St. Thomas said in the thirteenth century: "The people among whom a custom is introduced may be of two conditions. If they are free and able to make their own laws, the consent of the whole people expressed by a custom counts far more in favor of a particular observance than does the authority of the sovereign who has not the power to frame laws, except as representing the people. Wherefore although each individual cannot make laws, yet the whole people can. If, however, the people have not the free power to make their own laws or to abolish a law made by a higher authority; nevertheless with such a people a prevailing custom obtains the force of law, in so far as it is tolerated by those to whom it belongs to make laws for the people; because by the very fact that they tolerated it, they seem to approve of that which is introduced by custom."[33] Concerning the power of Kings and the various ways of settling

[29] Pollock and Maitland, *History of English Law*, vol. I, 133.
[30] *Ibid.*, 134.
[31] *i. e.*, Morally perfective of man's nature.
[32] Corpus Juris Canonici Dist., IV, c. 2; also Julien Havet Melanges, 1895, pp. 673, 674.
[33] Q. 97, a. 3, *ad* 3.

with a tyrannous ruler, St. Thomas again adds definiteness to the older tradition. In his *De Regimine Principum* he says: "If any people has the right to provide a ruler for itself, it will not be acting unjustly if it strip him of his authority or place a check on his power, when he abuses it tyrannically. Nor should such a people be thought unfaithful in deposing the tyrant even should it have previously subjected itself to him forever. For inasmuch as he carries on the government of the people without the fidelity which his office requires, he himself deserves that the pact should not be kept by his subjects."[34]

By this time, however, an opposite theory had started up. In the struggle between Gregory VII and Henry IV of Germany, those who sided with the King sought what semblance of a justification they could find for their cause in false and lying reports about the Pope. Later when Frederick Barbarossa was asked from whom he held his imperial dignity he answered: "From God alone by the choice of the princes." This was a formal denial of its true historical origin. But to support the claim, he and his successors began to appeal to principles in Roman law diametrically opposed to those upon which Medieval civilization was founded. This appeal to Pagan principles and the strife of argument and of wars which it engendered in the great contest between the Papacy and the Empire, soon began to react on the consciences of men. Already in Dante's *Monarchia* we find all thought of liberty sacrificed in the attempt to solve the problem of order. As a necessary consequence it becomes less and less a matter of striving for such an order as reason might demand. Craft and will-force, from a means in actual use, gradually came to be defended as the only means in practical theory. *The Vision and Creed of Piers Ploughman,* written in England sometime around the end of the fourteenth century, might properly be called a lament for the disrupted state of men's consciences in consequence of the corruption of justice by those in power. In the next century Philippe de Commines gives, in his *Memoirs,* a description of the tyranny that prevailed in France in his day, and sees no hope but in

[34] Lib I. c. VI.

the thought, "that there is a necessity that every prince or great lord should have an adversary to restrain and keep him in humility and fear, or else there would be no living under them, nor near them."[35] Finally Machiavelli, with his idea of the State as an end in itself, sacrifices all to mere efficiency, so that Jean Bodin's "modern" working definition of sovereignty, as the "supreme power over citizens and subjects, unrestrained by laws,"[36] was alone needed for the complete revival of the old Pagan idea of government.

But this was not to remain unchallenged. The sound Christian tradition persisted not only in the schools but even in the minds of the people. Not so very long before Richard II's accession to the throne, the author of *Piers Ploughman,* whose orthodoxy has been unjustly questioned by those ignorant of Catholic belief, beholding the royal cortege supposedly in vision says:

> Thanne kam a King
> Knighthood hym ladde.
> Might of the communes
> Made hym to regne.

Philippe de Commines in the *Memoirs* already referred to declared: "there is no prince who can raise money any other way (than by free consent of his people) unless it be by tyranny, and contrary to the laws of the Church; but many are so stupid as not to know what rights they have in this respect."[37] In the lifetime of de Commines and at the States General held at Tours in 1484, the year after Luther's birth, Philippe Pot, Seigneur de la Roche, deputy for the nobility of Burgundy, stood out boldly against Guillaume de Rochfort, chancellor of France, when the latter insisted that obedience was the first duty of the French subject. "As history relates," Philippe Pot said, "and as I learned from my forefathers, in the beginning the sovereign people instituted Kings by election and it gave special preference to those men who surpassed others in virtue

[35] De Regimine Principum, I, 6.

[36] Bohn's edition of Scoble's trans., vol. I., p. 399.

[37] Quoted by Dunning: "Political Theories from Luther to Montesquieu," p. 96; 3 loc. cit., p. 388.

and ability. . . . I would have you admit that the State is something that pertains to the people who have entrusted it to Kings and that those who have held it by force or otherwise, without any consent of the people, are deemed tyrants and usurpers of that which belongs to others."[38] And again: "When the King is incapable of governing, the right to determine the course of affairs evidently should return, not to some prince nor to a council of princes, but to the people, the donors of this power. The people have not the right to rule, but they have the right to administer the affairs of the nation through those whom they have freely elected. I mean by the people not only the common people and serfs, but the men of every class, so that under the name of States General I include even the princes and exclude none who reside within the realm."[39]

With the Scholastic revival of the sixteenth and seventeenth century this Medieval Christian tradition was supplied anew with the theoretic justification which the outstanding problems created by the Reformation and the Renaissance demanded. In the cause of liberty the two great protagonists were Bellarmine and Suarez, the one an Italian, the other a Spaniard, but both Jesuits and both ably supported by a large number among their brethren who followed their lead. What Lecky has stated in regard to Jesuits in those days may be taken as a somewhat enlightening admission, if proper allowance be made for some exaggeration and for a number of inaccuracies that still pass as common currency. He says: "The marvellous flexibility of intellect and the profound knowledge of the world that then, at least, characterized their order, soon convinced them that the exigencies of the conflict were not to be met by following the old precedents of the Fathers, and that it was necessary to restrict in every way the overgrown power of the sovereigns. They saw, what no others in the Catholic Church seem to have perceived, that a great future was in store for the people, and they labored with a zeal that will secure them everlasting honor,

[38] Quoted by Chas. Jourdain *La Royaute Française et le droit populaire.* Revue des Questions Historiques, vol. 16 (1874), p. 379.

[39] Quoted from the same speech by G. Picot, Histoire des États Généraux, vol. II, 2d ed., pp. 6, 7.

to hasten and direct the emancipation. By a system of the boldest casuistry, by a fearless use of their private judgment in all matters which the Church had not strictly defined, and above all by a skilful employment and expansion of some of the maxims of the schoolmen, they succeeded in disentangling themselves from the traditions of the past, and in giving an impulse to liberalism wherever their influence extended.''[40]

The problem with which the Jesuits had to contend differed, of course, entirely from the one with which the Fathers had had to deal. We have seen, moreover, what the origin of that non-Medieval *false* tradition was from which they had to disentangle themselves. Beginning with the revival of Roman law in its old-time Pagan unassimilated form, this had developed into Machiavellian state absolutism. But in the process, especially in France, it had found itself obliged to assume sheep's clothing. For there was always the Pope to be reckoned with. After Philip the Fair's attack on Boniface VIII, William of Occam and Marsiglio of Padua began to misapply the Medieval political theory to the constitution of the Church with the purpose of undermining Papal influence.[41] And from their writings it was that, amidst the confusion created by the Schism of the West, the theory of national churches evolved which should leave the Pope little beyond the right to deliver pious exhortations. In its first applied form this theory was known as the Gallican Liberties, and, in the minds of those who advocated it under this misnomer, it resolved itself into a blind desire to curtail the direct influence of the Pope for the sake of exalting the King, the symbol of national unity. This might be freedom of a sort for rulers, it certainly contributed nothing to the rightful liberty of the people. But in France the theory was not worked out to its full logical conclusion till the decree was passed, during the French Revolution, for the civil constitution of the clergy.

The first to bring the whole question to definite practical

[40] History of the Rise and Influence of Rationalism in Europe (1890), vol. II, p. 147.

[41] See Maitland's Gierke, *Political Theories of the Middle Ages*, pp. 191, 192.

issue was James I of England[42] in his pedantic attempt to defend the deceptive oath of allegiance which he wished to impose on his Catholic subjects. In the controversy that ensued between himself and Bellarmine, the latter confined his attack to the real point in the argument namely, the exact interpretation of the oath and its bearing on the faith of Catholics. But James I, who insisted on filling the world with the splendor of his own learning, sent forth his *Premonition To All Most Mightie Monarches, Kings, Free Princes, And States of Christendome,* in which he reviews Bellarmine's earlier works and draws up a list of what he would have to be objectionable or dangerous errors. The futility of this becomes apparent when it is recalled that Bellarmine was already the most widely read controversialist of the day, and that chairs of controversy known as Anti-Bellarmine Colleges had been established in the time of Elizabeth at both Oxford and Cambridge with the express purpose of providing answers to these works.[43] But the line of tactics thus adopted by James had the merit of bringing into prominence one portion of Bellarmine's *De Controversiis* which, except for points gleaned from it by Hooker, in his effort to bring the Puritans back to reason, had, up to this, received little notice in England. This was his treatise *De Laicis sive Saecularibus* of which he himself speaks as being *exiguus libellus* or a little booklet and which, *it should be very carefully noted,* was written with the express intention of confuting the antinomian and anti-social tenets of Wycliffe, Huss, Luther and Calvin. In establishing the legitimacy of government, however, he argued from the old traditional Medieval ground that rulers derive their authority from the consent of the people. This was anathema to James and his Anglican bishops. Not content with an honest effort to deal squarely with the question, he and they began the policy of representing Jesuits as saying things they never uttered. As James stated the doctrine he wished attributed to Bellarmine, it read: "And as for the

[42] James made an explicit appeal to the so-called Gallican Liberties; see "The Political Works of James I," reprinted by Chas. H. McIlwain, p. 119.

[43] Frizon: Vie du Carindal Bellarmin, vol. I, p. 130.

setting up of the People above their own natural King, he bringeth in that principle of Sedition, that he may thereby prove, that Kings have not their power immediately of God, as the Pope hath his: For every King (saith he) is made and chosen by his people; nay, they doe but so transferre their power in the King's person, as they doe, notwithstanding, retaine their habitual power in their own hands, which upon certaine occasions they may actually take to themselves againe. This, I am sure, is an excellent ground in Divinite for all Rebels and rebellious people, who are hereby allowed to rebell against their Princes; and assume libertie unto themselves, when in their discretions they will thinke it convenient."[44] To this Bellarmine rejoined, in his *Apology,* with the statement that, had James merely quoted his exact words there would be no need of answering him; that, in the first place, the words "every King is made and chosen by his people" were neither his own nor those of anyone else as far as he knew, and were manifestly false; that, secondly, the opinion that "the people never so transfer their power to the King as not to retain habitual power in their own hands" was not originally his, but the opinion of Navarrus, whom he had quoted, and since the words were those of a noted author and had been read by many in all Christian countries and had been pondered for a long while without calling forth any accusation to the effect that Navarrus had laid the ground for sedition, he did not see why they should now be turned into a source of calumny against himself. Bellarmine then summed up his own opinion in the matter by asserting that: "In the beginning the people were free, either to create a magistracy with defined powers and for a time, as free republics do, or to elect a King with absolute power, and in perpetuity, to whom they had transferred all their own power, as is seen to be the case in hereditary monarchies. But after such a magistracy has been established, whether it be temporary or perpetual, the people have no supreme authority over it, but the magistrate or royal official has the right, above all, to this authority in regard to the people. Nor is one at liberty, without serious crime, to rebel against his legitimate ruler or to

[44] McIlwain, loc. cit., p. 153.

stir up sedition and rebellion."[45] In his *De Laicis* he had given a most lucid exposition of how this must be so from the very nature of things. Moreover, he there made it clear that, given a legitimate reason, the people might change from a monarchical form of government to that of an aristocracy or a democracy.[46] But, except for his doctrine on divided sovereignty, which constitutes Bellarmine's chief contribution to the science of government, he went little beyond a solidly reasoned defense of what was already received in Medieval tradition.

That such was the case should appear, not only from what has been already shown, but also from the fact that, at the time when Bellarmine's *De Controversiis* was first published, the Catholics of France had for some time been appealing to this very tradition, as embodied in their national institutions, in the effort to avert the succession to the throne of an heretical prince who might rob them of their faith as the English had been robbed of theirs.[47]

And should the claim that this tradition had been an actually living one, seem in need of any further corroboration, this will be found fully supplied, we think, in the following words from Alexander J. Carlyle, whose long years of study devoted to the careful examination and comparison of Medieval writings, apart from all modern gloss and misinterpretation, have made him the best authority thus far on this subject. According to him, "The first principle which seems to me to be behind the whole structure of Medieval society, is this, that political authority is the authority of the whole community. The great representative machinery in which this was finally embodied, represents one of the greatest achievements of civilization, and is a perpetual monument of the practical genius of the Middle Ages. This development would have been impossible, as its appearance would be unintelligible, if its foundations had not been laid deep in the principles of Medieval society and, especially, in the principle that all authority is the authority of the com-

[45] Apologia, cap. XIII.

[46] Opera Omnia Fevre ed., vol. III, pp. 10-12.

[47] Victor de Chalambert: Histoire de la Ligue, vol. I, passim. For the appeal to this special motive see pp. 73-76.

munity. This principle is implicit in the two great practical facts of Medieval society, the first, that law is the law of the community, the second, that the administrative organs of the community, if we may use a modern phrase, derive their authority from the consent of the community."[48]

Bellarmine's controversy with James I was soon followed by the publication of Suarez's two works: the *Defensio Fidei Catholicae* and the *De Legibus*. The first was an exhaustive refutation of the English King's contentions, and a defense of Bellarmine that furnished the occasion for a much ampler theoretic exposition of the doctrine of consent. Of the second, Paul Janet, in his *Histoire de la Science Politique*, has very truly said: "He who has read the *De Legibus* of Suarez knows thoroughly all the ethics, natural law and political science of the Middle Ages."[49] No more monumental work on law and government has yet been written. What is very much to our purpose, it is here that the principle will be found clearly stated for the first time and defended, viz: that, under proper circumstances, the people may retain the supreme power in themselves,[50] and that in such States as "are *de facto* free and retain the supreme power in themselves, yet commit the problem of passing laws to a senate, or to some leader to act either alone or in conjunction with a senate," such officials "are, perhaps, only delegates," the question depending on a point of fact and not of law.[51]

Now it is this principle, as embodied in our own constitution, together with the principle of divided sovereignty, first stated by Bellarmine, that distinguishes our peculiar form of government from that of any other known to history. In his speech, delivered on the 26th of November, 1787, in the Convention of Pennsylvania, James Wilson said: "Oft have I viewed with silent pleasure and admiration the force and prevalence, through the United States, of this principle—that the supreme power resides in the people; and that they never part with it. It

[48] American Historical Review, October, 1913, p. 6.
[49] Vol. II, p. 176.
[50] De Legibus, III, c. 2, n. 4; c. 4, n. 12; c. 9, n. 6.
[51] *Ibid.*, c. 4, n. 12.

may be called the *panacea* in politics. There can be no disorder in the community but may here receive a radical cure. If the error be in the legislature, it may be corrected by the constitution; if in the constitution, it may be corrected by the people. There is a remedy, therefore, for every distemper in government, if the people are not wanting to themselves. For a people wanting to themselves there is no remedy; from their power, as we have seen, there is no appeal; to their error, there is no superior principle of correction."[52]

Some few days later, that is on December 1, when it was objected in this same convention that the new system, proposed for ratification, threatened to do away with State sovereignties, Wilson replied with the declaration that: "When the principle is once settled that *the people* are the source of authority, the consequence is, that they may take from the subordinate governments powers with which they have hitherto trusted them, and place those powers in the general government, if it is thought that they will be productive of more good. They can distribute one portion of power to the more contracted circle, called State governments; they can also furnish another portion to the Government of the United States."[53]

This was, indeed, a remarkable application of the principle of consent, and, although it presupposes the whole Medieval development that led up to it, G. C. Curtis in his *Constitutional History of the United States* is almost too laconic in his comment, that it "was undoubtedly a novelty in political science; for no government had yet been constructed in which the individual stood, in the relation of subject, to two distinct sovereignties, each possesed of a distinct sphere and each supreme in its own sphere."[54] For, as he shows elsewhere, Vattel expressed the idea universally held in Europe both then and since, when in *Le Droit des Gens* he maintained "that every sovereignty, properly so called, is, in its own nature, one and individible." But it is scarcely accurate to claim that in this "the framers of the Constitution of the United States made a great discovery

[52] Works, edited by J. De Witt Andrews, vol. I, p. 543.
[53] Elliot's Debates, vol. II, p. 416.
[54] Vol. I, p. 337.

in the science of government."[55] Bellarmine, in his *De Summo Pontifice,* had previously explained how, on the basis of the principle of consent, such a division of sovereignty was not only possible, but most desirable; and, as we shall see, there is every reason to believe that at least Madison and Wilson were acquainted with Bellarmine and Suarez' writings, except for the fact of explicit reference, which, under the circumstances, could scarcely have been prudent. Bellarmine's opinion was that, "Because of the fallen state of human nature, a rule tempered by all three forms (the monarchic, the aristocratic and the democratic), is more useful than a simple monarchy. But this mixed form evidently requires that there should be in the commonwealth one supreme ruler who, while issuing commands to all, should himself be subject to none. Those, on the other hand, who preside over the provinces and cities should not be vicegerents of the King or mere annual judges, but let them be real rulers, subject in obedience to the supreme ruler, yet in such a manner as at all times to hold the regulation of their respective provinces or cities to be a matter of concern to themselves and not the concern of another. Thus the commonwealth would enjoy the benefits both of a monarchy under a King and of an aristocracy under a select body of rulers.

"If in addition to this it were provided that neither the supreme ruler nor those who ruled under him should attain to such positions of dignity by hereditary succession but that those best fitted should be selected from the body of the people and elevated to them, the commonwealth would then possess some of the attributes of a democracy. That this is the best form of government and the one most to be desired in this mortal life, we shall establish by two arguments.

"In the first place such a government would have all the good qualities which have been previously shown to exist in a monarchy but would also be more acceptable and advantageous in this life. As to the good qualities of a monarchy, it is clear that in our proposed plan of government they would be found included, since such a government comprises an element of monarchy in the true and proper sense of the word. That it

[55] Vol. II, p. 521.

would be more acceptable to all is evident from the fact that everyone prefers that form of government in which he himself can take a part, which is undoubtedly possible in this case, since it is the worth of a man and not his lineage that will be taken into consideration.

"With regard to the advantages of such a system there is scarcely need of insistence, as it is clear that one man cannot by himself rule over the separate provinces and cities, but, whether he be willing or not, he will be forced to entrust the administration of them either to attendants acting as his vicegerent, or to their own respective rulers; while, on the other hand, it is equally certain that such rulers will show much greater care in what they know to be their own concern than when acting as the vicarious agent of another."[56]

This shows how much prejudice there is in the contention of G. P. Gooch that the Jesuits were, at once, pure indifferentists and acute opportunists who caught up the first weapons that came to hand;[57] and also how much nearer the truth Lecky was in his estimate when he said: "It would be a mistake to suppose that the Jesuits advocated liberal principles only with a view to theological advantages, or in Protestant countries, or under the shelter of ecclesiastical authorities. More than once they maintained even their most extreme forms in the midst of Catholic nations, and, strange as the assertion may appear, it is in this order that we find some of the most rationalistic intellects of the age."[58] This last assertion, to be sure, implied, in Lecky's mind, that to do what they did, they had to wrest dogmatic tenets into conformity with natural religion, and it is based on the persistent Protestant assumption that reason and Christian dogma must somehow contradict one another. But the half-truth which the assertion contains; that is, the sort of rationalism of which the Jesuits were guilty, as well as the nature of the service they rendered to the cause of liberty in their own day, may be considered as fully described in the following words from Burke: "Reason" said he "is never

[56] Opera Omnia, vol. I, p. 467.
[57] English Democratic Ideas in the 17th Century, p. 28.
[58] Loc. cit., p. 149.

inconvenient but when it comes to be applied. Mere general truths interfere very little with the passions. They can, until they are roused by a troublesome application, rest in great tranquillity side by side, with tempers and proceedings the most directly opposite to them. Men want to be reminded who do not want to be taught: because those original ideas of rectitude to which the mind is compelled to assent when they are proposed, are not always as present to it as they ought to be. When people are gone, if not into a denial, at least into a sort of oblivion of those ideas; when they know them only as barren speculations, and not as practical motives for conduct, it will be proper to press, as well as to offer them to the understanding; and when one is attacked by prejudices which aim to intrude themselves into the place of law, what is left for us but to vouch and call to warranty those principles of original justice from whence alone our title to everything valuable in society is derived?''[59]

In the interval between the beginning of the controversy of James I with Bellarmine and the appearance of the *Defensio Fidei Catholicae* and the *De Legibus* of Suarez, the King suddenly found himself opposed from an entirely different quarter, but in a manner which was to prove to many, in England at least, the practical value of the Jesuit Doctrines on Government. This new opposition was started by the great and learned, if rather crabbed old lawyer, Sir Edward Coke, of whom G. P. Gooch very justly says: ''If he did not aid his countrymen to conquer new liberties, he did more than any other man to secure that they should preserve unimpaired such as they already possessed.''[60] In the endeavor to carry into effect the notion that he was entitled to rule England as an absolute sovereign, James attempted to make use of the Court of High Commission, established at the accession of Elizabeth, for cases of an ecclesiastical nature. As this was governed by no fixed rules and decided without appeal, the King hoped he might bring all persons, lay and spiritual, under its jurisdiction. To the means suggested, Coke, as Lord Chief Justice, made answer

[59] Fragments of a Tract on Popery Laws.
[60] Political Thought from Bacon to Halifax, p. 63.

that the practice was contrary to *Magna Charta.* Whereupon, the High Commission being silenced, Archbishop Bancroft proposed that recourse should be had to the notorious measure of "the King judging whatever cause he pleased in his own person, free from all risk of prohibition and appeal." Coke again resisted and, when the King in a rage declared it treason to affirm that he was in any way under the law, Coke merely replied in the words of a thirteenth century cleric and lawyer by saying: "Thus wrote Bracton; '*Rex non debet esse sub homine, sed sub Deo et Lege.*'" He then went on reminding the King that he "cannot without parliament, change any part of the common law nor create any offense by his proclamation which was not an offense before" and again that "the law of England is divided into three parts: common law, statute law, and custom; but the King's proclamation is none of them."

In the next reign, as is well known, Charles I strove to carry out his father's principles. This led to the stiff conflict between himself and parliament that resulted in rebellion. And here again Coke was the soul of the opposition and its energizing motive force. Finding himself without supplies, the King resolved to summon the great council of the nation. Coke, though quite ready to advocate a generous grant of money, was determined that before it came to this there should be an effectual redress of grievances. He thereupon framed the famous *Petition of Right* which stands out in English history as a second *Magna Charta.* In spite of much reluctance and opposition, Coke succeeded, almost single handed, in getting the bill passed. On its return from the Lords, however, it was found that the proviso had been appended "that nothing therein contained should be construed to entrench on the sovereign power of the Crown." Then it was that Sir Edward Coke made his momentous speech that decided the fate of modern liberty. Said he: "This is *magnum in parvo.* It is a matter of great weight and to speak plainly, it will overthrow all our Petitions; it trenches on all parts of it; it flies at loans, at imprisonment, and at billeting of soldiers. This turns all about again. Look into all the petitions of former times; the assenting answer to them never contained a saving of the King's sovereignty. I know that

prerogative is part of the law, but 'sovereign power' is no parliamentary word. In my opinion, it weakens *Magna Charta* and all the statutes whereon we rely for the declaration of our liberties; for they are also absolute without any saving of 'sovereign power.' Should we now add it, we shall weaken the foundation of the law, and then the building must fall. If we grant this by implication, we give a 'sovereign power' above all laws. 'Power' in law is taken for *a power with force:* the sheriff shall take the *power of the county.* What it means here, God only knows. It is repugnant to our Petition. This is a Petition of Right granted on acts of parliament, and the laws which we were born to enjoy. Our ancestors could never endure a *salvo jure suo* from Kings—no more than our Kings of old could endure from churchmen [like Bancroft, etc.?] *salvo honore Dei et Ecclesiae.* We must not admit it, and to qualify it is impossible. Let us hold our privileges according to law. That power which is above the law, is not fit for the King to ask or the people to yield. Sooner would I have the prerogative abused and myself to lye under it; for though I should suffer, a time would come for the deliverance of the country."

It was thus that Sir Edward Coke effectively reminded the English people of their ancient Medieval tradition of liberties at a time when they were in most imminent danger of losing it, in the same way as the French and other continental nations lost theirs. But the work was only half done. There yet remained the urgent necessity that some, in the words of Burke, should "vouch and call to warranty those principles of original justice from whence alone our title to everything valuable in society is derived." Coke himself attempted something of the sort when in his Reports of Cases he laid it down as a principle "that the common law shall control acts of parliament and sometimes shall adjudge them to be merely void; for where an act of parliament is against common right and reason, the common law shall control it and adjudge it to be void." But through the machinations of Bacon, Coke's counterpart in meanness and the originator of modern Kitchen Philosophies, this was used as a pretext for dismissing the Lord Chief Justice from the King's

Bench.[61] Nor has the doctrine of the inalienable rights of the individual ever yet been readmitted into the English constitution. As A. F. Pollard says: "The growth of positive law at the expense of divine and natural law, and the idea that human will and mundane counsels could amend the foundations of society, is the beginning of the sovereignty of parliament." Though a statement of real fact, this is also illustrative of that intellectual sclerosis from which the English historical, philosophical, and legal mind has suffered so much in consequence of the influence of Bacon, Hobbes, Locke, Hume, Bentham and Austin. Professor Pollard has merely taken Austin's word for what the "divine and natural law" are, and the bias this has caused in his own interpretation of history may be gauged from the very next sentence where he solemnly announces that, "without that overriding sovereignty (of parliament) to limit and abolish them, English medieval liberties would have petrified society on a mould of local and class particularism, and have produced that kind of ossification which stereotyped oriental communities, and even reduced France to the necessity of bursting its social shell for the sake of expansion."[62] But in the name of what, pray, was this last effected? The *Declaration of the Rights of Man*, however wild and erroneous, certainly came much nearer being an appeal to "divine and natural law" than an abject surrender to an "omnicompetent" English debating society placed above all laws by merely labelling it with the antiquarian name of Parliament. Fortunately for us, however, there were some in England in the days of James I and for many years after, who read up the controversy between the Scottish King and his Jesuit antagonists and learned to know better than either John Austin or Jean Jacques Rousseau. These were the Whigs.

John Millar, who was teaching law at the University of Glasgow at the time when James Wilson emigrated to the colonies, and who may be taken as a spokesman for the Whigs in the time of Burke and of our providential severance from England, gives, in brief outline, an account of the nature

[61] Lord Campbell, *Lives of the Chief Justices*, vol. I, pp. 278-339.
[62] The Evolution of Parliament, pp. 175, 176.

and origin of the fundamental doctrines in the Whig philosophy of government. In an essay on the *Progress of Science Relative to Law and Government* he says: "There are natural rights, which belong to mankind antecedent to the formation of civil society. We may easily conceive [note that this is not the same as Locke's and Rousseau's unhistorical assumption of fact], that, in a state of nature, we should be entitled to maintain our personal safety, to exercise our natural liberty, so far as it does not encroach upon the rights of others; and even to maintain a property in those things which we have come to possess, by original occupancy, or by our labor in producing them. These rights are not lost, though they may be differently modified when we enter society. A part of them, doubtless, must be resigned for the sake of those advantages to be derived from the social state. We must resign, for example, the privilege of avenging injuries, for the advantage of being protected by courts of justice. We must give up a part of our property, that the public may be enabled to afford that protection. We must yield obedience to the legislative power, that we may enjoy that good order and tranquillity to be expected from its cool and dispassionate regulations. But the rights which we resign ought in all these cases, to be compensated by the advantages obtained; and the restraints, or burdens imposed, ought neither to be greater, nor more numerous, than are necessary for the general welfare and happiness . . . .

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"In England, where the attention of the inhabitants has been long directed to speculations of this nature, the two original principles of the government . . . . were distinguished by political writers *as far back, at least, as the commencement of the contest between the King and the people, upon the accession of the House Stewart,* and were then respectively patronized and adopted by the two great parties into which the nation was divided. The principle of *authority* was that of the tories; by which they endeavored to justify the pretensions of the sovereign to absolute power. As the dignity of the monarch excited universal respect and reverence and as it was not conferred by

election, but had been immemorially possessed by a hereditary title, it was understood to be derived from the author of our nature who has implanted in mankind the seeds of loyalty and allegiance. The monarch is therefore, not accountable to his subjects, but only to the Deity, by whom he is appointed; and consequently his power, so far as we are concerned, is absolute, requiring on our part, an unlimited passive obedience. If guilty of tyranny and oppression, he may be called to an account in the next world, for transgressing the laws of his Maker; but in this life, he is totally exempt from all restraint or punishment; and the people, whom heaven in its anger has visited with this affliction, have no other resource than prayers and supplications.

"The Whigs, on the other hand, founded the power of a sovereign, and of all inferior magistrates and rulers, upon the principle of *utility*. They maintained, that as all government is intended for defending the natural rights of mankind, and for promoting the happiness of human society, every exertion of power in governors, inconsistent with that end, is illegal and criminal; and it is the height of absurdity to suppose, that, when an illegal and unwarrantable power is usurped, the people have no right to resist the exercise of it by punishing the usurper. The power of a King is no otherwise of Divine appointment than any other event which happens in the dispositions of Providence; and, in the share of government which is devolved upon him, he is no more the vicegerent of God Almighty than any inferior officer, to whom the smallest or meanest branch of administration is committed.

"At the same time that the Whigs considered the good of society as the foundation of our submission to government, they attempted to modify and confirm that principle by the additional principle of *consent*. As the union of mankind in society is a matter of choice, the particular form of government introduced into any country depends, in like manner, upon the inclination of the inhabitants. According to the general current of popular opinion, they adopt certain political arrangements, and submit to different rulers and magistrates, either by positive regulation and express contracts or by acting in such a manner as gives room to infer a tacit agreement. As government, there-

fore, arose from a contract, or rather a number of contracts, either expressed or implied, among the different members of society, the terms of submission between the governors and the governed, as well as the right of punishing either party, upon a violation of those original agreements, may thence be easily and clearly ascertained.

"With respect to this origin of the duty of allegiance, which has been much insisted on by the principal writers in this country, and which *has of late been dressed and presented in different shapes by politicians on the continent,* it seems rather to be a peculiar explanation and view of the former principle of utility, than any new or separate ground of our submission to government; and even, when considered in this light, it must be admitted with such precautions and limitations, that very little advantage is gained by it."[63]

This last was inserted for the evident purpose of taking the wind out of the sails of a set of dissenters in England who had a way of flying in the face of all tradition, and between whom and themelves, the old Whigs ever insisted on making a clear and marked distinction.

Among the earliest to take up the genuine Whig position just described, was Sir Edward Sandys, the leader of the independent party in Parliament, who drew up "With great force of reasoning and Spirit of Liberty" the remonstrance against the conduct of James I towards his first Parliament, and had often appealed for a redress of the grievances of the people, and even "learned to raise his voice for the toleration of those with whom he did not wholly agree."[64] It was he moreover who, when chief officer of the second London company for Virginia, established representative government in that colony. This was in 1619 and, therefore, *before the landing of the Puritans.* Now Sandys had been educated by Richard Hooker and must have consequently been well versed in the principles of St. Thomas and the earlier scholastics on government; so that, when the controversy arose between King James and the Jesuits, his

[63] An Historical View of the English Government from the Settlement of the Saxons in Britain to the Revolution in 1688 (1812), vol. IV, pp. 294-300.

[64] Alexander Brown, *The First Republic in America,* p. 75.

mind was particularly prepared to grasp the practical bearing of the much discussed Jesuit doctrines of the problem of liberty, which he and his circle of friends were trying to unravel. As one of this circle, stood that other great figure, John Selden, whose opinions, because of his writings, are more explicitly known. In his *Table-talk* we have his views as formed largely within the shadow of the great Puritan upheaval, yet offering a striking contrast to those of Milton; a fact which in itself would justify the statement of G. P. Gooch that "the first Whig was not Shaftesbury, but Selden." [65]

Confining ourselves to the points touching on government we find the following among Selden's reported utterances: "If our Fathers have lost their Liberty, why may not we labor to regain it? *Answ.* We must look to the Contract; if that be rightly made we must stand to it; if we once grant we may recede from Contracts upon any inconveniency that may afterwards happen, we shall have no Bargain Kept." "A King is a thing Men have made for their own Sakes, for quietness' sake." "Kings are all individuals, this or that King; there is no species of Kings. A King that claims Privileges in his own Country, because they have them in another, is just as a cook, that claims fees in one Lord's House, because they are allowed in another. If the Master of the House will yield them, well and good." "There is not anything in the World more abused than this sentence, *Salus populi suprema Lex esto;* for we apply it, as if we ought to forsake the known Law, when it may be most for the advantage of the People, when it means no such thing . . . . (But) in all the Laws you make, have a special Eye to the Good of the People." "*Objection* He that makes one, is greater than he that is made; the People make the King *ergo. Answer.* . . . The answer to all these Doubts is, Have you agreed so? if you have, then it must remain till you have altered it." "When the Schoolmen talk of *Recta Ratio* in Morals, either they understand Reason as it is governed by a Command from above, or else they say no more than a Woman, when she says a thing is so, because it is so; that is, her Reason persuades her 'tis so. The other Acception has sense in it."

[65] Political Thought from Bacon to Halifax, p. 76.

"I cannot fancy to myself what the Law of Nature means, but the Law of God. How should I know I ought not to steal, I ought not to commit Adultery, unless somebody had told me so? Surely 'tis because I have been told so! 'Tis not because I think I ought not to do them, nor because you think I ought not; if so, our minds might change; whence then comes the restraint? From a higher Power; nothing else can bind. I cannot bind myself, for I may untie myself again; nor an equal cannot bind me, for we may untie one another; it must be a superior, even God Almighty. If two of us make a Bargain, why should either of us stand to it? What need you care what you say, or what need I care what I say? Certainly because there is something about me that tells me *Fides est servanda;* and if we after alter our Minds and make a new Bargain, there's *Fides servanda* there too." "Most Men's Learning is nothing but History dully taken up. If I quote Thomas Aquinas for some Tenet, and believe it, because the Schoolmen say so, that is but History. Few men make themselves masters of the things they write or speak. The Jesuits and the Lawyers of *France,* and the Low-countrymen, have engrossed all learning. The rest of the world make nothing but Homilies."

During the Puritan Revolution, Protestantism had its one best chance to show what it could do towards creating a social order. Yet the result should have surprised those only who were blind to its essential antinomianism. With the return of the Stuarts the outstanding problem was precisely that of healing those wounds which, in the words of the *Declaration of Breda,* had for "so many years together been kept bleeding." The reaction was naturally towards absolutism in government. But happily for the cause of liberty Hobbes appeared with his theory of ethics and politics. "The foundation whereof," as Cudworth said, "is first laid in the villanizing of human nature; as that, which has not so much as any the least seeds either of politicalness or ethicalness at all in it; nothing of equity and philanthrophy . . . nothing of public and common concern, but all private and selfish." This was no more than what Machiavelli, Luther and Calvin had maintained. But in the light of recent experience this villainizing of human nature was

seen to shake the very foundations of all morality. Refutations abounded and for a century or more Hobbes' influence may be traced in the efforts, often one-sided and indirect, to undermine his position. In the beginning we find men such as Cumberland, Cudworth and Clarke taking something of the high ground of Medieval scholastic thought which was still being studied in the universities. Thus Hobbes' contention was "that sovereignty is essentially infinite and therefore altogether inconsistent with religion, that would limit and confine it," and that "conscience, which religion introduceth, is private judgment of good and evil, just and unjust, and therefore altogether inconsistent with true politics; that can admit of no private conscience, but only one public conscience of the law." To this Cudworth replied that "authority of commanding is such a right, as supposes obligation in others to obey, without which it could be nothing but mere will and force. But none can be obliged in duty to obey, but by natural justice; commands, as such, not creating obligation but presupposing it. For, if persons were not before obliged to obey, no commands would signify anything to them. Wherefore, the first original obligation is not from will, but nature" . . . and again "Nor, indeed, can this private judgment of men, according to their appetite and utility, be possibly otherwise taken away, than by natural justice, which is a thing, not of a private, but of a public and common nature; and by conscience, that obligeth to obey all the lawful commands of civil sovereigns, though contrary to men's appetites and private interest. Wherefore conscience also, is in itself, not of a private and partial, but of a public and common nature; it respecting Divine laws, impartial justice and equity, and the good of the whole, when clashing with our own selfish good, and private utility. This is the only thing that can naturally consociate mankind together, lay a foundation for bodies politic, and take away that private will and judgment, according to men's appetite and utility, which is inconsistent with the same. . . . It is true indeed, that particular persons must make a judgment in conscience for themselves (a public conscience being nonsense and ridiculous) and that they may also err therein; yet is not the rule

neither, by which conscience judgeth, private; not itself unaccountable unless in such mistaken fanatics, as professedly follow private impulses, but either the natural and eternal laws of God, or else his revealed will, things more public than the civil laws of any country, and of which others also may judge. Nevertheless, we deny not, but that evil persons may, and do sometime make a pretence of conscience and religion, in order to sedition and rebellion, as the best things may be abused; but this is not the fault of religion, but only of the men; conscience obliging, though first to obey God, yet, in subordination to him the laws of civil sovereigns also."

These words appear at the very end of a perfect wilderness of ill assorted bits of erudition that form the contents of the author's noted work, *The True Intellectual System of the Universe.*[66] Yet they clearly show how far back thought had traveled from the position taken up by Milton,[67] or by that genial old Puritan, John Winthrop, when in his *Arbitary Government Described* he made the assertion, "that the officers of this body politic have a rule to walk by in all their administrations, which rule is the Word of God, and such conclusions and deductions as are, or shall be, regularly drawn from thence." What is more, we know that Hamilton must have read the above passages, since a pay-book kept by him in 1776 and interspersed with notes and reflections upon political philosophy, contains a list of books, and among others such as "Hobbes' Dialogues" and "Cicero's Morals," there also occurs "Cudworth's Intellectual System."[68]

The note thus struck by Cudworth becomes dominant in the thought of the times and is perceived clearly in the poetry even, of Dryden, Cudworth's contemporary, and later in that of Pope,[69] whose preceptor in philosophy, Bolingbroke, is noted

[66] First published in 1678 (1838), vol. II, pp. 357, 359-360.

[67] See below, ch. 6.

[68] Henry Ford, *Alexander Hamilton*, p. 23.

[69] Suarez' definition of Eternal Law runs: "Eternal law is the free determination of the will of God, ordaining the rule to be observed, either, first generally by all parts of the universe as a means to a common good, whether immediately belonging to it in respect of the entire universe, or, at least in respect of the singular parts thereof, or secondly, to be specially

for having been the greatest plagiarist of his age, after Voltaire. The immediate consequence was, that political controversy found itself supplied with a much broader and generally recognized ethical basis for argument. With the Puritans and dissenters, generally, reduced to live on meagre sufferance under the oppressive shadow of the Established Church, the Whigs were now freer to take up the contest against the defenders of the Divine Right of Kings on the ground of civil liberty alone. Nor were the Jesuits and their doctrines left out of account in this new development towards recovering what the Reformation had ruined. In the preface of his *Religio Laici* Dryden, a decided Tory, testifies to the fact that the Jesuits were still being widely read. Contrasting the danger that threatened from Papists and Fanatics, he admits that he thinks the former "the least dangerous, at least in appearance, to our present state" but then he goes on to raise the old bogy by asking: "how can we be sure from the practice of Jesuited Papists in that [the Catholic] religion? For not two or three of that order, as some of them would impose upon us, but almost the whole body of them, are of opinion, that their infallible master has a right over Kings not only in spirituals but temporals. Not to name Mariana, Bellarmine, Emanuel Sa, Molina, Santarel, Simancha, and at least twenty others of foreign countries; we can produce of our own nation, Campion, and Doleman or Parsons, besides many others *are named* whom I have not read, who all of them attest this doctrine."[70] Sir Thomas Brown testifies to the same fact in his *Religio Medici* where he refers to Suarez and quotes Bellarmine as if their works were the subject of common study.[71] The Tories, moreover, used as their chief argument against the

observed by intellectual creatures in respect to their free operations." De Legibus, II, c. 3, n. 6.

Pope in his *Essay on Man* says:

> God in the nature of each being founds
> Its proper bliss, and sets its proper bounds.
> But as He framed a whole the whole to bless
> On mutual wants builds mutual happiness
> So from the first eternal order ran
> And creature linked to creature man to man.

[70] Works (1837), vol. I, p. 71.

[71a] Works, edited by Chas. Sayle, vol. I, p. xx and p. 24.

[71b] *Ibid.*, vol. II, pp. 288, 313.

Whigs, the evident fact that the latters' principles were derived from the Jesuits. Dryden, for instance, in the postscript to his translation of the *History of the League* by Maimbourg, (undertaken in order "to increase the unpopularity of the Whigs, by ascribing to the association which Shaftesbury had proposed the same motives and principles which actuated the members of the League,") held Bellarmine up to execration, for maintaining that, "in the kingdoms of men, the power of the king is from the people, because the people make the king." While Sir Robert Filmer, in his *Patriarcha or the Natural Power of Kings,* saw no better way of exposing the villainous doctrines of those who contested the divine right of Kings, than by a brief yet exact summary of the chapter in Bellarmine's *De Laicis,* to which James I had himself objected. This summary of Filmer's reads: "To make evident the grounds of this question about the Natural Liberty of Mankind, I will lay down some passages of Cardinal Bellarmine that may best unfold the state of this controversie. Secular or civil power (saith he) is instituted by men; it is in the people, unless they bestow it on a Prince. This power is immediately in the whole multitude, as in the subject of it; for this power is in the Divine Law, but the Divine Law hath given this power to no particular man. If the Positive Law be taken away there is left no reason why amongst a multitude (who are equal) one rather than another should bear rule over the rest. Power is given by the multitude to one man, or to more, by the same law of nature; for the commonwealth cannot exercise this power, therefore, it is bound to bestow it upon some one man or some few. It depends upon the consent of the multitude to ordain over themselves a king, counsel or other magistrates; and, if there be a lawful cause, the multitude may change the kingdom into an aristocracy or democracy. Thus far Bellarmine; in which passages are comprised the strength of all that I have read or heard produced for the natural liberty of the subject." [72]

This challenge, the Whigs could scarcely ignore and the two most notable contributions from their side of the controversy: Sidney's *Discourses Concerning Government,* and Locke's *Two*

[72] Edition of 1680, pp. 8-9.

Treatises on Government, had the twofold purpose of refuting the Tories' theory as expounded by Filmer, and of justifying the doctrines which Filmer attributed to Bellarmine. Concerning school-divines, whom Filmer included in one general condemnation, Sidney answered: "Though the schoolmen were corrupt, they were neither stupid nor unlearned. They could not but see that which all men saw, nor lay more approved foundations than that 'man is naturally free'; that he cannot justly be deprived of that liberty without cause; and that he doth not resign it or any part of it, unless it be in consideration of a greater good, which he proposes to himself." A commendation, the first part of which, tallies closely with what Grotius had said in his *De Jure Belli et Pacis* in justification of his own use of the scholastics: "Whenever," says Grotius, "they" (the Scholastics) "are found to agree on moral questions they can scarcely be wrong—they who are so wonderfully keen in discovering the flaws in others' arguments. Yet even in their zealous defence of an opposite doctrine they furnish a most praiseworthy example of modesty. For reasons are their weapons against each other, not personal insult—that spawn of barren minds—a usage which has lately begun shamefully to dishonor letters."[73]

With regard to Bellarmine and Suarez, however, Sidney was more explicit. To the former he refers seven times, and to the latter twice, in the first hundred and twenty-eight pages. The most notable of these passages is that dealing directly with the doctrines as given above by Filmer, where Sidney says: "I do not find any great matters in the passages taken out of Bellarmin, which our author says 'comprehend the strength of all that he had ever heard, read, or seen produced for the natural liberty of the subject.' But as he has not told us where they are to be found, I do not think myself obliged to examine all his works, to see whether they are rightly cited or not. However, there is certainly nothing new in them. We see the same as to the substance, in those who wrote many ages before him, as well as in many that have lived since his time, who neither minded him, nor what he had written. I dare not take upon me

[73] Prolegomena, 52.

to give an account of his works having read few of them (sic)[74] but as he seems to have laid the foundation of his discourses in such common notions as were assented to by all mankind, those who follow the same method have no more regard to Jesuitism and Popery, though he was a Jesuite and a cardinal than they who agree with Faber and other Jesuits in the principles of Geometry, which no sober man ever denied.''[75]

Algernon Sidney wrote in the days when James II, ambitious to emulate the Gallican practices of Louis XIV, stood out, even against the Pope,[76] in his efforts to free himself from the trammels of the constitution. The injustice of Sidney's trial and death caused him to be considered by the Whigs as a martyr for liberty, very much in the same way as the Tories looked upon Charles I as a martyr for the divine right of kings.

Locke, on the other hand, wrote his *Two Treatises* in Justification of the Revolution of 1688. In these, no explicit mention is made of the scholastics or their writings, yet references to Hooker are frequent and the work itself is even more of a direct attempt than Sidney's, to enlarge upon Filmer's synopsis of Bellarmine. As Sir James MacKintosh has said: ''Mr. Locke's general principles of government were adopted by him, probably without much examination, as the doctrine which had for ages prevailed in the schools of Europe, and which afforded an obvious and adequate justification of a resistence to oppression. He delivers them as he found them, without even appearing to have made them his own by new modifications. The opinion that the right of the magistrate to obedience, is founded in the original delegation of power by the people to the government, is at least as old as the writings of St. Thomas, and, in the beginning of the seventeenth century, it was regarded as the common doctrine of all the divines, jurists and philosophers who had at that time examined the moral foundation of political authority.''[77]

[74] He need only have read one.

[75] (1805), vol. I, p. 20.

[76] W. E. H. Lecky, *History of England in the Eighteenth Century,* (1878), vol. I, pp. 20-21.

[77] Essay on *The Philosophical Genius of Bacon and Locke.*

In the light of what we have seen this statement is no more than a plain statement of fact, and coincides fully with the assertion of J. Q. Adams, that the theory of "consent," as embodied in our Declaration of Independence and our Constitution, "had been working itself into the mind of man for many ages." But with regards to Sidney and Locke, this should be noted. Neither were real thinkers, and in their zeal to show the wrong in Toryism, they lost sight of such experience of the past as was embodied in Medieval tradition, and in theory both lean considerably away from the sound principles in Medieval teachings on government. As a result, they furnished grounds for the more superficial radicalism of dissenters like Drs. Price and Priestly, and extremists such as Horne Tooke and Thomas Paine. Nor were the Whigs themselves blind to this fact. Burke declared: "The bane of the Whigs has been the admission among them of the corps of *schemers,* who in reality and at bottom, mean little more than to indulge themselves with speculations; but who do us infinite mischief by persuading many sober and well-meaning people that we have designs inconsistent with the constitution left us by our forefathers. . . . Would to God it were in our power to keep things *where they are* in point of *form,* provided we were able to improve them in point of substance."[78] This was written by Burke to the Sheriff of Bristol in 1780. In the following year Josiah Tucker, Dean of Gloucester, published his *Treatise Concerning Civil Government.* This is an explicit review of Locke and his more radical followers, from the standpoint of the genuine Whig. Concerning the derivation of power in government he says: "The Ideas of a *Quasi-Contract* contain our own on this Head, and those of every constitutional Whig throughout the Kingdom." But to those who were then talking up "the state of nature," "inalienable rights" and "explicit contract," in Rousseau's sense, he made the suggestion: "That which the Lockians ought to have said is probably to this effect, that, tho' it be absurd to suppose that civil government, *in general,* took its rise from previous conventions, and mutual

[78] Correspondence, edited by C. W. Earle Fitzwilliams and Sir R. Bourke, 1884.

Stipulations *actually* entered into between Party and Party,—and tho', whenever such a contract as here supposed did take place, *at some* very extraordinary conjuncture,—(a contract, by the by, which could only bind the *contracting parties:)* —yet as civil government in general is in reality a *public trust,* be the origin, and the form of it whatever they may;—there must be some covenant or other, *supposed* or *implied,* as a condition necessarily annexed to every degree of discretionary power, whether expressed or not. Had they said only this, they would have exactly coincided with the ideas of a *Quasi-Contract* before mentioned. Nay more, they would have avoided all those paradoxes, which attend their present system, and render it one of the most mischievous, as well as ridiculous schemes that ever disgraced the reasoning faculties of human nature.''[79]

With this passage in mind, it may be interesting to call attention to the fact that Dean Tucker supplies the instance of one Whig, at least, who had fully formed his opinion on the question of government before knowing definitely what ''the judicious'' Hooker had maintained on the subject.[80] Besides the expression *Quasi-Contract* is an expression of Suarez. As for the accuracy of his statement, that all constitutional Whigs held the doctrine of consent in this form, this is fairly attested to by the greatest of them. In his *Thoughts in the Cause of the Present Discontents,* Burke says clearly: ''The king is the representative of the people; so are the lords; so are the judges. They all are trustees for the people, as well as the commons; because no power is given for the sole sake of the holder; and

[79] Edition of 1781, p. 139. In a letter to W. Bradford, 1774, Madison says: ''I was so lucky as to find Dean Tucker's tracts on my return home, sent by mistake with some other books imported this spring. I have read them with peculiar satisfaction and illumination with respect to the interests of America and Britain. At the same time his ingenious and plausible defence of parliamentary authority carries in it such defects and misrepresentations, as to confirm me in political orthodoxy—after the same manner as the specious arguments of Infidels have established the faith of inquiring Christians.'' Works, Congress edition, vol. I, p. 17. This last has no reference to the principles on government as Madison evidently concurred with the Dean in that respect.

[80] *Ibid,* p. 160.

although government certainly is an institution of divine authority, yet its forms and the persons who administer it, all originate from the people."[81]

But for an adequately comprehensive summary of the Whig philosophy of government, together with a clear indication of its intimate dependence on the traditional theory of the Medieval scholastic writers, we will conclude this chapter with the following rather lengthy passage from Burke's *Fragments of a Tract on the Popery Laws.* "As a law directed against the mass of the nation has not the nature of a reasonable institution, so neither has it the authority: for, in all forms of government the people is the true legislator; and whether the immediate and instrumental cause of the law be a single person or many, the remote and efficient cause is the consent of the people, either actual or implied; and such consent is absolutely essential to its validity. To the solid establishment of every law, two things are essentially requisite: first a proper and sufficient human power to declare and modify the matter of the law; and next, such a fit and equitable constitution as they have a right to declare and render binding. With regard to the first requisite, the human authority, it is their judgment they give up, not their right. The people indeed are presumed to consent to whatever the legislature ordains for their benefit; and they are to acquiesce in it, though they do not clearly see into the propriety of the means by which they are conducted to that desirable end. This they owe as an act of homage and just deference to a reason which the necessity of government has made superior to their own. But though the means, and indeed the nature of a public advantage, may not always be evident to the understanding of the subject, no one is so gross and stupid as not to distinguish between a benefit and an injury. No one can imagine then, an exclusion of a great body of men, not from favors, privileges and trusts, but from the common advantages of society, can ever be a thing, intended for their good, or can ever be ratified by any implied consent of theirs. If therefore, at least an implied human consent is necessary to the existence of a law, such a constitution cannot in propriety be a law at all.

[81] Works, vol. II, p. 50.

"But if we could suppose that such a ratification was made, not virtually, but actually; by the people, not representatively, but even collectively, still it would be null and void. They have no right to make a law prejudicial to the whole community, even though the delinquents, in making such an act, should be themselves the chief sufferers by it; because it would be made against the principle of a superior law, which it is not in the power of any community, or of the whole race of man, to alter—I mean the will of him who gave us our nature, and in giving, impressed an invariable law upon it. It would be hard to point out any error more truly subversive of all the order and beauty, of all the peace and happiness of human society, than the position that any body of men have a right to make what laws they please; or that laws can derive any authority from their institution, merely and independent of the quality of the subject matter. No argument of policy, reason of State, or preservation of the constitution, can be pleaded in favor of such a practice. They may indeed impeach the frame of that constitution; but can never touch this immovable principle. This seems to be indeed the doctrine that Hobbes broached in the last century and which was then so frequently and so ably refuted. . . .

"In reality there are two, and only two, foundations of law; and they are both of them conditions without which nothing can give it any force; I mean equity and utility. With respect to the former, it grows out of the great rule of equality, which is grounded upon our common nature, and which Philo, with propriety and beauty, calls the mother of justice. All human laws are, properly speaking, only declaratory; they may alter the mode and application, but have no power over the substance of original justice. The other foundation of law which is utility, must be understood, not of partial or limited, but of general and public utility, connected in the same manner with, and derived directly from, our rational nature; for any other utility may be the utility of a robber, but cannot be that of a citizen, the interest of the domestic enemy, and not that of a member of the commonwealth." Burke then quotes Cicero and the Roman Jurist Paulus against the Penal Laws, and continues: "It would be far more easy to heap up authorities

on this article, than to excuse the prolixity and tediousness of producing any at all in proof of a point which, though too often practically denied, is in its theory almost self-evident. For Suarez, handling this very question, *utrum de ratione et substantia Legis esse, ut propter commune bonum feratur,* does not hesitate a moment, finding no ground in reason or authority, to render the affirmative in the least degree disputable; *in questione ergo proposita* (says he) *nulla est inter auctores controversia; sed omnium commune est axioma, de substantia et ratione legis esse, ut pro communi bono feratur; ita ut, propter illud praecipue tradatur;* having observed in another place, *contra omnem rectitudinem est, bonum commune ad privatum ordinare, seu totum ad partem propter ipsam referre.''*

In view of what has been previously shown this passage from Burke, on analysis, will be found to contain a perfect digest of all that was characteristic of Medieval theory on government and law. But not only this, it also gives, in one clear statement, the grounds on which we parted from England and the principles upon which our Constitution was reared. And it is worth noting that the man who wrote the *Reflections on the French Revolution,* also said, in a private letter: ''I am afraid that the American affairs will be settled, and the fate of that great portion of the world decided, in a manner very different from what, I am sure, we join in wishing. There has been too much disposition, from the beginning, to solve all these questions by force. I do not as yet find this disposition greatly altered by time or by events; and it is but too probable that if America should ever be established in a state of freedom, she will owe that liberal settlement to her separation from this country.''[82]

Appendix

It should be noted that Selden and Cudworth each take into consideration only one portion of what, in the scholastic system, is constitutive of the natural law. Selden, moreover, still shows something of the influence of the Protestant notion of ''personal

[82] Correspondence, vol. II, p. 311.

inspiration," in that he understands conscience to be the "voice of God" in a literal sense. His concern was to state the fact and source of obligation. In this he was followed later by Butler, and by those who may be called the subjective intuitionists, among whom should be numbered Kant, and his followers. Cudworth, on the other hand, was taken up with the quest of that which formed the basis for deciding between right and wrong. As metaphysics became neglected, this problem gradually devolved into the empiricism of the Utilitarians who, on the basis of what was seen to be expedient, supplied *something* of a reasonable ground for judging *what* should be done, but could give no satisfactory ultimate account as to the *why*.

Of the subjective intuitionists J. S. Mill wrote very truly: "The notion that truths, external to the mind, may be known by intuition or consciousness independently of observation and experience, is, I am persuaded, in these times, the great intellectual support of false doctrines and bad institutions. By the aid of this theory, every inveterate belief and every intense feeling, of which the origin is not remembered, is enabled to dispense with the obligation of justifying itself by reason, and is erected into its own all-sufficient voucher and justification. There never was such an instrument devised for consecrating all deep-seated prejudices. And the chief strength of this false philosophy in morals, politics and religion, lies in the appeal which it is accustomed to make to the evidence of mathematics and of cognate branches of physical science" (Autobiography, chap. VII.).

Lecky, on the other hand, in his *History of European Morals*, draws an interesting outline of both schools with their contrasts. "The two rival theories of morals" says he "are known by many names and are subdivided into many groups. One of them is generally described as the stoical, the intuitive, the independent or the sentimental, the other as the epicurean, the inductive, the ultilitarian or the selfish. The moralists of the former school, to state their opinion in the broadest form, believe that we have a natural power of perceiving that some qualities, such as benevolence, chastity, or veracity, are better than others,

and that we ought to cultivate them, and to repress their opposites. In other words, they contend, that by the constitution of our nature, the notion of right carries with it a feeling of obligation; that, to say a course of conduct is our duty, is, in itself, and apart from all consequences, an intelligible and sufficient reason for practising it; and that we derive the first principles of our duties from intuition. The moralist of the opposite school denies that we have any such natural perception. He maintains that we have by nature absolutely no knowledge of merit and demerit, of the comparative excellence of our feelings and actions, and that we derive these notions solely from an observation of the course of life which is conducive to human happiness. That which makes actions good is, that they increase the happiness or diminish the pains of mankind. That which constitutes their demerit is, their opposite tendency. To procure "that greatest happiness of the greatest number" is therefore the highest aim of the moralist, the supreme type and expression of virtue." (Pages 2, 3.)

Then some few pages further on, the same author states what is, in truth, the real root of the problem, though he refrains from any attempt at solving it himself. He says: "A theory of morals must explain, not only what constitutes a duty, but also how we obtain the notion of there being such a thing as duty. It must tell us not merely what is the course of conduct we *ought* to pursue, but also what is the meaning of the word 'ought,' and from what source we derive the idea it expresses."

Now, unlike either of the two schools outlined above, the Scholastic conception of the natural law includes both the objective and the subjective, and may be briefly defined thus: "The natural law is the objective content of the intellect representing, by its natural tendency, the *proper* interrelation of the elements of the universe and that *due* order, to which the will *ought* to conform in consequence of the contingency of the whole.

Explanation of Terms.

The objective content of the intellect representing; that is to say it exists in a judgment. Suarez De Legibus II, c. 5, n. 14.

By its natural tendency means that the intellect left to itself is not free; it sees or it does not. Hence, the will should not interfere except there be ulterior evidence, present to the mind, of the prudence of such action on its part, in which case alone, it is allowable, *i. e.*, not contrary to the nature of either faculty.

Proper interrelation, i. e., relations founded in the nature of things.

Due order, i. e., the order demanded by the nature and intrinsic purpose of things when subject to the disposal of our free will.

Ought to conform: that is to say, there is the obligation or moral necessity, so to dispose of things as not to contradict the true nature and purpose of their being, but to establish them, rather, in such order as their respective natures and proper ends will allow, in so far as this is ideally present to the mind.

Contingency of the whole, means that this obligation is seen to arise from the non-necessary existence of things in the universe, which necessarily argues the will of One who established it, and who, having the right to exact, must also intend that we should conform to His will thus manifested by the natural light of reason, since the purpose of our being, as that of all existing things, is and can be none other than Himself.

6. MODERN "PRACTICAL LIBERTY" AND COMMON SENSE

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"Liberty" said Carlyle "needs new definition." Yet *new* definitions have not been wanting either in number or variety. His own whereby the true liberty of man is made to consist "in his finding out or being forced to find out the right path, and walk thereon,"[1] is, if not new, at least far more popular than it was in his day; but for effective application it calls for a Metternich or a Bismarck. Guizot, on the other hand, maintained that "the right to liberty, in the relations of man with man, is derived from the right to obey nothing that is not reason"[2] which certainly would sound reasonable enough if we could forget what Guizot and the nineteenth century took the word *reason* to mean. Mazzini with eloquent dogmatism proclaimed liberty to be "the right and duty of the human soul" and after some twenty years of agitation limited this article of political faith with the declaration that "man has no rights from nature, save only one right of liberating himself from every obstacle impeding his free fulfilment of his own duties."[3] Finally, lest the import of the word *duty* be here misconstrued, we have Lord Acton to tell us "By liberty I mean the assurance that every man shall be protected in doing what he believes his duty against the influence of authority and majorities, custom and opinion."[4] What wonder if through fear lest individuals be led more and more to allow themselves the benefit of every doubt legitimate or otherwise against all due or established order of things, statesmen and lawyers should revert to the

[1] Past and Present, Book III, ch. XIII.
[2] History of the Origin of Representative Government (1861), p. 349.
[3] Essays by Mazzini: Camelot Series, pp. 229, 308.
[4] History of Freedom and Other Essays, p. 3.

philosophy of Hobbes as modernized in Austin and claim with the latter that "political or civil liberty is the liberty from legal obligation, which is left or granted by a sovereign government to any of its own subjects; and that since the power of government is incapable of legal limitation, the government is legally free to abridge their political liberty at its own pleasure or discretion."[5]

But meanwhile a set of masculine thinkers "little inclined to the course of changing about with every wind, without regard to men or things" had already faced the problem of liberty squarely. Burke, the greatest among them, did but express their common stand when in a private letter to Mons. Dupont to whom the *Reflections on the French Revolution* were later addressed, he said "of all the loose terms in the world liberty is the most indefinite. It is not solitary, unconnected, individual, selfish liberty, as if every man was to regulate the whole of his conduct by his own will. The liberty I mean is *social* freedom. It is that state of things in which liberty is secured by equality of restraint. A constitution of things in which the liberty of no one man, and no body of men, and no number of men can find means to trespass on the liberty of any person, or any description of persons, in the society. This kind of liberty, is, indeed, but another name for justice; ascertained by wise laws, and secured by well-constructed institutions. I am sure that liberty, so incorporated, and in a manner identified with justice, must be infinitely dear to every one who is capable of conceiving what it is. But whenever a separation is made between liberty and justice, neither is, in my opinion safe."[6] That this was nothing more nor less than the philosophy of government that had already been embodied in our own Constitution at the time these words were written will only sound strange to those who have never studied the writings of Hamilton, Madison, or James Wilson, or who having read more recent works on our particular form of government saw no need of devoting attention to the debates in the State conventions that led to its adoption. Nor is the fact that this statement comes

[5] Lectures on Jurisprudence, edited by R. Campbell, p. 159.
[6] Correspondence, vol. I, p. 312.

from Burke without its significance for the proper understanding of the genuine American concept of liberty. Because he opposed the French Revolution it has been generally assumed that he suddenly turned Tory. Yet in the same letter from which the above is taken he distinctly asserts "If this real *practical* liberty, with a government powerful to protect, impotent to evade it, be established, or is in a fair train of being established in the democracy, or rather collection of democracies, which seem to be chosen for the future frame of society in France, it is not my having long enjoyed a sober share of freedom, under a qualified monarchy, that shall render me incapable of admiring and praising your system of republics. I should rejoice even though England should be reckoned only as one among the happy nations, and should no longer retain her proud distinction, her monopoly of fame for a practical constitution, in which the grand secret had been found, of reconciling a government of real energy for all foreign and all domestic purposes, with the most perfect security to the liberty and safety of individuals. The government, whatever its name or form may be, that shall be found substantially and practically to unite these advantages, will most merit the applause of all discerning men."[7] Nothing, certainly, written in direct commendation of our own Constitution could be more apt; and the fact that it was on such ground that Burke condemned the French Revolution shows clearly that not only could he still say with sincerity and truth as he had written nine years before: "If I know anything of myself, I have taken my part in political connections and political quarrels, for the purpose of advancing justice and the dominion of reason;"[8] it points to the further much more important fact that Burke and the leaders among the Whigs generally both in England and Scotland and in the United States and newly independent colonies attached a far more definite meaning to the words reason, justice and liberty than has been the case since the days when the French threw the world into confusion

[7] *Ibid.*, vol. III, p. 106.
[8] *Ibid.*, p. 112.

with what Carlyle very properly calls their "Gospel according to Jean Jacques."

In consequence of our Revolution and the spirit it engendered, the distinction between freedom from tyranny so soundly proclaimed in the Declaration of Independence and the sort of liberty solidly established, by our Constitution, was very largely lost sight of by the popular mind. This, assisted in no small degree by some of the party tactics of Jefferson and his followers, naturally enough opened the door wide to the introduction of a large measure of this evil and wholly alien influence. The result has been that those who write on this subject still persist in identifying the ethical and historical language of the Declaration of Independence with the mere metaphysical assertions of the French Declaration of the Rights of Man. Englishmen such as Sir Henry Maine,[9] David G. Ritchie[10] and Viscount Bryce[11] have not been slow to foster this apprehension but it is now high time that we dispense with any further English assistance in the interpretation of our constitutional history. The fact is that there is scarcely a point, certainly no important point in the Declaration as penned by Jefferson that had not been previously laid down in almost identical language by James Wilson in his *Considerations on the Nature and Extent of the Legislative Authority of the British Parliament* (1774) and in his *Speech in the Convention for the Province of Pennsylvania* (1775)[12] and if there was a man in the colonies at the time who knew his own mind and was free from anything like French rationalistic and romantic tendencies it was assuredly Wilson. Moreover, while the French Declaration directly intended to wipe away the past in the wild hope that human nature needed only to be fed on metaphysical pseudo-scientific jargon in order to bring about a mathematically ordered society; there was not one among those who signed our Declaration or took part in the Federal convention but would have subscribed to the words in which Joseph De Maistre declared "One of the

[9] Ancient Law (1887), Am. ed. ch. IV, p. 91.
[10] Natural Rights (1895), ch. I, p. 5.
[11] Modern Democracies, vol. I, p. 43.
[12] Works, vol. II, pp. 505-565.

great errors of a century that professed all of them, was the belief that a political constitution could be written and created *a priori*, whereas reason and experience unite in establishing the fact that a constitution is a work of Providence and that what is most fundamental and most essentially constitutional in the laws of any nation cannot be written down in words."[13]

But here again is there need of obviating a number of misconceptions. Owing to the hostility long felt for England a singular silence has prevailed even up to the present on the whole question of the sources whence the political ideas and principles embodied in our Constitution were actually derived. Many spoke of it as though it were in every part nothing more than the voluntary creation of man. More recently, however, public opinion has been gradually awakening to the fact that the American Constitution was in reality "a reaffirmation of principles already American by hereditary usage or long-established custom."[14] As James Russell Lowell has said the framers of our Constitution "were not seduced by the French fallacy that a new system of government could be ordered like a new suit of clothes. They would as soon have thought of ordering a new suit of flesh and skin. It is only on the roaring loom of time that the stuff is woven for such a vesture of their thought and experience as they were meditating. They recognized fully the value of tradition and habit as the great allies of permanence and stability."[15] This is of course of very great importance for anything like a practical appreciation of our Constitution. It is important to realize that the Fathers were guided by experience and that in consequence, as Sir Henry Maine put it, "The Constitution of the United States is colored throughout by political ideas of British origin."[16] But there is grave danger at present, especially in certain educational quarters of this country, lest some, with the lingering disposition of a provincial towards what was *once* the Mother country, should be inclined to stress the learned ignorance of Englishmen

[13] Essai sur le Principe Générateur des Constitutions Politiques, p. 1.
[14] C. E. Stevens, *Sources of the Constitution of the United States*, p. 53.
[15] Democracy.
[16] Popular Government (1886), p. 207.

in this matter and forget the warning of Hamilton when he said "Many mistakes have arisen from fallacious comparisons between our government and theirs."[17] For one thing those who framed our Constitution did not believe in the "historic method"[18] of Sir Henry Maine and the modern English Austinians. They knew their English history and the history of English law and of the English Constitution better than any similar body of men in England in their day and what is more they understood certain vital points in that history better than some of those who are engaged in rewriting it in England now, along the lines of muddle-headed Austinian assumptions. Burke described the actual practice, if not the consciously uttered theory of every constitutional Whig, when writing to the Bishop of Chester he said "My opinion of the truth or falsehood of facts related in history is formed on the common rules of criticism: my opinion of characters, on those rules and the common principles of morality." "History is a preceptor of prudence, not of principles. The principles of true politics are those of morality enlarged; and I neither now do, nor ever will, admit any other." "The principles that guide us in public and in private, as they are not of our devising, but moulded into the nature and essence of things, will endure with the sun and moon,—long, very long after Whig and Tory, Stuart and Brunswick, and all such miserable bubbles and playthings of the hour, are vanished from existence and from memory."[19] Christopher J. Tiedman, well known for his little book *The Unwritten Constitution of the United States,* and who may be taken as representative of the many in this country that have gone over bag and baggage to the modern English way of thinking goes so far as to say that in the early days of our national life "little was

[17] Speech on the Constitution June 21, 1788. Works, Federal edition, vol. II, p. 33.

[18] This consists in drawing inductive conclusions from a wide investigation of past historic facts without any reference to the bad or good, true or false in human actions or thoughts, which is about as sensible as for a sea captain to set out without chart or compass or any concern for the fixed points in the heavens and expect to reach his destination by merely watching the wake of the ship.

[19] Correspondence, vol. I, pp. 331, 332, 333.

thought of those 'glittering generalities,' as they were called, which made it a part of our constitutional law that man is possessed of certain inalienable rights, that cannot be denied to him by government, and which denied to government the power to do more than to prevent the infliction of injuries upon others."[20] Yet here again Burke by way of anticipation had already provided the answer. He is speaking of course of the Revolution of 1688 but his words apply equally to ours. "A man who condemns the revolution, has no longer any obnoxious persons to hang his principles on, and therefore, he and they may be made but too convenient to the executive powers of the time:—but, for this reason, he is much more dangerous than formerly to the constitution and liberties of his country. Let me add further, that a man who praises the *fact* of the revolution, and abandons its *principles,*—substituting the *instrumental* persons and establishments consequential to that event, in the place of its *ends,* is as bad as the former. To me, indeed, he seems to be infinitely worse, as he can have no sound moral principles of any kind, nor be a fit servant for honest government in any mode whatever. The one has *lost* his attachment, the last has *deserted* his principles and the last is by far the most culpable and the most dangerous."[22]

Whatever may be thought of those who, through conflicting principles or the want of any, later put the Constitution to the proving test only to display the more clearly the saving elasticity and consistency of its texture, the all important question of the principles upon which it was formed has been sadly misinterpreted in the past, and at present has come to be almost wholly overlooked. Of those who framed it we are told that "they had a profound disbelief in theory, and knew better than to commit the folly of breaking with the past"[23] as though

[20] P. 79. The last part of this statement expresses Locke's idea but not that of the framers of our Constitution.

[22] *Ibid.*, p. 335, speaking on the reform of representation, Burke also said: "Whenever I speak against theory, I mean always a weak, erroneous, fallacious, unfounded or imperfect theory: and one of the ways of discovering that it is a false theory, is by comparing it with practice." Works, vol. III, p. 357. Oxford Univ. Press edition.

[23] Democracy.

theory and experience were wholly incompatible. Or again how often have we not heard it repeated that these same men "cared less about political theory than about good government" as if government of any kind did not necessarily imply and presuppose a corresponding theory. The modern method of tinkering with things established on the basis of mere expediency in the thought-saving belief that progress and civilization is "all of a piece with the development of an embryo or the unfolding of a flower"[24] might be all very well for the rustic in Horace who sat by the river bank waiting for the stream to flow by in the hope of crossing without wetting his feet, or it may even satisfy a certain type of Englishman who like a Roman of the fourth century can pursue his own selfish ends and watch an empire go to pieces in the superstitious conviction that what is eternal cannot be in need of human thought or private endeavor. But those who gave us our Constitution knew better. In the first place they were Whigs. As Jefferson said "Before the Revolution we were all good English Whigs, cordial in their free principles, and in their jealousies of their executive magistrate"[25] and Hamilton testified to the same fact when in the *Letters from Phocion* he said "The Spirit of Whigism cherishes legal liberty, holds the rights of every individual sacred, condemns or punishes no man without regular trial and conviction of some crime declared by antecedent laws; reprobates equally the punishment of the citizen by arbitrary acts of legislation, as by the lawless combination of unauthorized individuals."[26] Now the one cardinal point in Whig philosophy was that there were principles implicit in the British Constitution that were quite as essential and even more important for its proper working than any constitutional forms. Some of these, as founded in the nature of man and of things should, from the necessity manifest to reason, form the basis and articulate the structure of every legitimate government. Others following as a necessary consequence from the voluntary determination of the nation or its representative and rulers in the past gave to government its

[24] Spencer, *Social Statics* (1892), p. 32.
[25] Works, 2d Randolph edition, vol. I, p. 65.
[26] Loc. cit., vol. IV, p. 231.

distinctive national modifications which as part of a constituted or established order admitted of all reasonable reform and improvement so long as justice were done to those whose rights and interests happened to be involved in the change. With regard to the first set of principles, namely those founded in natural law "it is," as Burke said, "the part of the speculative philosopher to mark the proper ends of government. It is the business of the politician who is the philosopher in action to find out proper means towards those ends, and to employ them with effect."[27] Though none of those present at the Federal Convention posed as speculative philosophers, with the single exception of Franklin, and while nearly all answered more or less closely Burke's definition of the politician, there were three, perhaps even more self-effacing than the rest who held the clearest title to both descriptions. These were Madison, Hamilton and Wilson; and it should be noted that just as the best and most comprehensive defense and justification of the Constitution, when proposed for ratification, came from them, so also was it they who in debate set forth the most essential proposals and suggested the measures that involved the closest and most fundamental application of principles. Moreover their respective writings show a wide and thorough acquaintance with all that had been written on government up to their day. But what, to our knowledge, has not been sufficiently remarked is the fact that with all their copious references they are found disagreeing with such authorities almost as often as they are discovered quoting them with approval. This of itself would argue that they themselves were in possession of a definite philosophy of their own. But we are not left to mere conjecture in this matter.

Though little has been said of the influence and significance of Scottish thought in the Colonies during this period the facts are such as to speak for themselves. Jefferson in his *Memoir* speaking of his early education at William and Mary College says: "It was my great good fortune, and what probably fixed the destinies of my life, that Dr. William Small of Scotland was then professor of Mathematics, a man profound in most

[27] Works, vol. II, p. 82.

of the useful branches of science, with a happy talent for communication, correct and gentlemanly manners, and an enlarged and liberal mind. He most happily for me, became soon attached to me, and made me his daily companion when not engaged in the school; and from his conversation I got my first views of the expansion of science, and of the system of things in which we are placed''[28] and Jefferson then adds that he gave regular lectures in ethics, rhetoric and *belles lettres,* a point in keeping with what then formed the ambition of almost every one who took up teaching in the schools and universities of Scotland.

James Wilson was a Scotchman by birth who came to this country in 1763 at the age of twenty-one after having studied at the universities of St. Andrew, Glasgow and Edinburgh. At the last of these he was a pupil of Hugh Blair's, while at Glasgow, just two years before his emigrating to the Colonies, the ''Stalwart Whig''[29] and friend of Adam Smith and of Burke, John Millar,[30] began his lectures on law and on government, some of which were afterwards embodied in a once highly reputed work entitled *Historical View of the English Government from the Settlement of the Saxons in Britain to the Revolution of 1688,* and intended as a Whig offset to the Tory *History of England* by Hume. Moreover though Wilson was known as ''the best read lawyer'' in the Federal Convention and although the Marquis of Chastellux, when in Philadelphia, wondered at the extent of his library and the wide range of his learning, still his own works show a decided preference for the Scottish thinkers of the anti-sceptical and non-sentimental type.

Madison, on the other hand, was educated at Princeton at the

[28] Loc. cit., p. 2.

[29] Francis W. Hirst, *Adam Smith,* p. 222.

[30] D. Francis Jeffrey said of him: ''It may afford a clearer conception of his intellectual character, to say, that it corresponded pretty nearly with the abstract idea that the learned of England entertain of a *Scottish philosopher;* a personage, that is, with little or no deference to the authority of great names, and not very apt to be startled at conclusions that seem to run counter to received opinions or existing institutions; acute, sagacious and systematical; irreverent towards classical literature; rather indefatigable in argument, than patient in investigation; vigilant in observation of fact, but not so strong in their number as skillful in their application.'' Edinburgh Review, 1803, vol. III, p. 156.

time when John Witherspoon, who had come over from Scotland in 1768, was president of that college. The bearing of this on his development has been pointed out by William E. Rives in his *Life and Times of Madison.* "The increased attention paid to the study of the nature and constitution of the human mind, and the improvement which had been introduced into this fundamental department of knowledge by the philosophical inquiries of his own countrymen constituted a marked and most important feature of Dr. Witherspoon's reforms. Mr. Madison formed a taste for these inquiries, which entered deeply . . . into the character and habits of his mind, and gave to his political writings in after life a profound and philosophic cast, which distinguished them eminently and favorably from the production of the ablest of his contemporaries."[31] With regard to the inquiries here referred to, the occasion for them had been furnished by the fact that throughout Scotland there had been a growing conviction among scholars of the previous generation that the teachings of Shaftesbury and Hutcheson were sensualizing and degrading the old philosophy of Aristotle and of the schoolmen. As Witherspoon himself said "As for logic, it is well known this part of education is fallen into great contempt, and it is not to be expected that such brisk and lively spirits who have always hated everything that looked scholastic like, can bear to be tied down to strict rules of argumentation." While elsewhere dealing with the new inquiries he states "Some late writers have advanced, with great apparent reason, that there are certain first principles or dictates of common sense which are either simple perceptions or seen with intuitive evidence. These are the foundation of all reasoning, and without them to reason is a word without meaning. They can no more be proved than you can prove an axiom in mathematical science. These authors of Scotland have lately produced and supported this opinion, to resolve at once all the refinement and metaphysical objections of some infidel writers."[32]

This was the philosophy of common sense which was worked up in Scotland by Reid and Beattie in opposition to Hume and

[31] Vol. I, p. 21.
[32] J. McCosh, *The Scottish Philosophy,* pp. 185, 188.

Berkley, but neither of these was its real originator. The first to propound it in developed form was the Jesuit Buffier (1661–1737) whose many works were highly appreciated during the eighteenth century, while the controversies they were intended to meet were still going on. Voltaire praised some of them loudly which, of course, of itself signifies very little beyond the fact that they thus received rather wide advertisement. On the other hand several articles in the first *Encyclopedia* contain whole pages literally copied from his *Discours sur l'étude et la marche des sciences* without any acknowledgment of their real author.[33] Sir Joshua Reynolds, the life-long friend of Edmund Burke, in his *Discourses* adopted and illustrated the theory of beauty which the Père Buffier had suggested[34] while George Campbell, principal of the Marishal College, Aberdeen, was among the first in Scotland to adapt his doctrine on common sense to the philosophy of eloquence. In the well known work *Philosophy of Rhetoric,* the first outline of which was read in 1757 before a private literary society that included Reid and Beattie among its members, Campbell says "The first among the moderns who took notice of this principle, as one of the genuine springs of our Knowledge, was Buffier, a French philosopher of the present century, in a book entitled *Traité des Premières Verités:* one who, to an uncommon degree of acuteness in matters of abstraction, added that solidity of judgment which hath prevented in him, what had proved the wreck of many great names in philosophy, his understanding becoming the dupe of his ingenuity. This doctrine hath lately in our own country, been set in the clearest light, and supported by invincible force of argument by two very able writers in the science of man, Dr. Reid in his *Inquiry into the Human Mind* and Dr. Beattie in his *Essay on the Immutability of Truths.*"[35]

Buffier's direct aim had been to counteract the idealism of Descartes and the sensism of Locke by showing that these two systems had been constructed on mere half-truths and that in

[33] Biographie Universelle (1812), Art. Buffier.

[34] Francis Jeffrey, *Alison on Taste*—see his contributions to the Edinburgh Review, in Modern British Essayists (1860).

[35] P. 60 (1859), see Oeuvres Philosophiques De Père Buffier, edited by F. Bouillier, 1853.

order to lay the true foundation of a sound and common sense philosophy nothing more was required than an accurate restatement of what both had initially asserted on grounds made to appear contradictory but which in reality were only opposite yet essentially complementary.[36] The real significance of his doctrine and of the movement which his writings started, especially among the Scotch, was clearly indicated by Henry Hume or Lord Kaimes in *Sketches of the History of Man* (1774) where, besides incorporating a goodly number of Buffier's ideas into his work as if they were his own, he says "I have lately met with a very sensible and judicious treatise wrote by Father Buffier about fifty years ago, concerning first principles and the source of human judgments which, with great propriety, he prefixed to his treatise of logic. And indeed I apprehend it is a subject of such consequence, that if inquisitive men can be brought to the same unanimity in the first principles of the other sciences, as in those of mathematics and natural philosophy (and why should we despair of a general agreement in things that are self-evident?), this might be considered as a third grand era in the progress of human reason."[37]

This, of course, implied the actual undoing of one of the worst consequences of the Reformation, namely, the socially disruptive and centrifugal tendencies instilled into countless minds by the Protestant doctrines of "private judgment" and "per-

[36] The influence of this on James Wilson is seen in the following words: "Frequent," says he in his lectures on Law, "and laborious have been the attempts of philosophers to investigate the manner, in which things external are perceived by the mind. Let us imitate them neither in their fruitless searches to discover what cannot be known; nor in framing hypotheses which will not bear the test of reason, or of intuition; nor in rejecting self-evident truths, which, though they cannot be proved by reasoning, are known by a species of evidence superior to any that reasoning can produce." Works, vol. I, p. 215.

[37] Vol. II, p. 240: James Wilson's attitude in this matter was that "Despotism, by an artful use of 'superiority' in politics; and scepticism by an artful use of 'ideas' in metaphysics, have endeavored—and their endeavors have frequently been attended with too much success—to destroy all true liberty and sound philosophy. By their baneful effects, the science of man and the science of government have been poisoned to their very fountains. But those destroyers of others have met or must meet with their own destruction." Works, vol. I, p. 245.

sonal inspiration.'' Milton in his *Treatise of Civil Power in Ecclesiastical Causes* had expressed something of far wider import than any private opinion of his own when he declared, ''I here mean by conscience or religion that full persuasion, whereby *we are assured,* that our belief and practice, as far as we are able to apprehend and probably make appear, is according to the will of God and His Holy Spirit within us, which we ought to follow much rather than any law of man, as not only his word everywhere bids us, but the very dictate of reason (sic) tells us.'' As is quite plain and as subsequent forms of Protestantism have come to admit practically, the ''assurance of the Holy Spirit'' here is nothing more than sentiment and emotion.[38] Moreover, the moral *sense* of Shaftesbury, Hutcheson and Hume is only a modification of the same, minus all assumptions of the supernatural and with the additional identification of moral sentiment with the pantheistic notion of the natural law revived at the Renaissance from the writings of the Stoics[39] and from the Roman jurists. In either case, what was held to be normative of individual action necessarily excluded all ground for rational accord, seeing that sentiment is of its very nature something wholly particular to each one of us. And it was precisely because of their adoption of Hume's point of view in this matter that Bentham and Austin were led to revive

[38] Guizot, himself a Calvinist, accounts for the earlier Protestant notion of the ''Holy Spirit'' in the following manner: ''The birth of faith especially if derived, without reflection, from natural belief that passes to the new state without intermediary knowledge, often takes the character of a sudden revolution equally unforeseen and obscure even to the one effected. And thus is it readily explained how the thought of a direct intervention on the part of God should be appealed to on such an occasion. But this idea, in the way in which it is commonly understood (among Protestants), is gradually giving ground before the more careful study and better knowledge of the facts.'' Meditations et Études Morales: Quel est le vrai sens du mot foi.

[39] Among the earliest to revive this notion was La Boetie, the friend of Montaigne, in a brief essay entitled *De La Servitude Volontaire* where amidst much else of a like tenor he says: ''Le naturel de l'homme est bien d'estre franc, et de la vouloir estre: mais aussi sa nature est telle, que naturellement il tient le ply que la nourriture luy donne.'' This revived notion of the Stoics is that also of Montesquieu's second chapter of *L'Esprit des Lois.*

Hobbes'[40] notions on society and government, notions which will be found confuted by Hamilton as early as in his eighteenth year when he wrote his second pamphlet *The Farmer Refuted* in defense of the American cause.[41]

Certainly was it on no such shifty ground as this that our Constitution was erected. Pelatiah Webster spoke the mind of the leaders at least among those who framed it when in his memorable document *A Dissertation on the Political Union and Constitution of the Thirteen United States* he laid it down as fundamental that "This union, however important, cannot be supported without a constitution founded on principles of natural truth, fitness and utility." They were not afflicted with any of our present day cosmic qualms, for they were not agnostics. They knew their own minds and had a well reasoned and reasonable belief in divine Providence, which very naturally relieved them from any sense of responsibility for the universe as a whole, as well as from any fear lest somewhere behind every certainty in their own minds it might still be playing tricks. In other words they knew that whatever the abuses of men might be, the universe itself remained reasonable and that man himself had been reasonably made. The result was there was not one of them but would have recognized as his own Burke's conviction that "There is nothing in the world really beneficial that does not lie within the reach of informed understanding

[40] Wilson evidently had both Hobbes and Hume in mind when he wrote: "A body of morality, pretending to be complete, has sometimes been built on a single pillar of the inward frame: the entire conduct of life has been accounted for, at least the attempt has been made to account for it, from a single quality or power. Many systems of this kind have appeared, calculated merely to flatter the mind. According to some writers man is entirely selfish; according to others universal benevolence is the highest aim of his nature. One founds morality upon sympathy solely; another exclusively upon utility. But the variety of human nature is not so easily comprehended or reached. It is a complicated machine; and is unavoidably so, in order to answer the various and important purposes, for which it is formed and designed." Works, vol. I, p. 212. Thus we see that the Fathers knew of those "other thinkers" of whom Viscount Bryce boasts, who in England "were drawing from the actual experience of mankind arguments which furnished another set of foundations on which democracy might rest" (Modern Democracies, vol. I, p. 44), and they very intelligently disagreed with them for leaving the rational ideal out of all account.

[41] Loc. cit., vol. I, p. 61.

and a well directed pursuit. There is nothing that God has judged good for us, that He has not given us the means to accomplish both in the natural and the moral world.''[42]

How Madison and Wilson came to be of this mind in consequence of their training along the lines of the Scottish common sense philosophy we have already seen. In Hamilton's case this influence is not so fully traceable. Yet it could scarcely have been wanting in any degree much below that enjoyed by the other two. In the first place he was himself half Scotch and proud of the fact. Besides, the Rev. Hugh Knox, Hamilton's pastor and teacher at St. Croix, though originally from Ireland, was a Princeton man and a Presbyterian minister apparently very much of Dr. Witherspoon's school of thought, seeing that in 1777 he drew up an argument in favor of the American cause entitled *An Address to America by a Friend in a Foreign Government* which he sent to the Continental Congress for publication.[43] Francis Barber, whose school Hamilton first attended after his arrival in New York, was another Princeton man as was also Elias Boudinot with whom he lived, and he himself came into personal contact with Dr. Witherspoon at the time when the latter's reputation for philosophical learning was already considerable throughout the colonies and when those with Princeton connections could scarcely escape being interested in the reforms he was instituting.

But even if the facts just adduced proved nothing with regard to Hamilton's acquaintance with Scottish common sense philosophy, there was another source of fairly consistent thought, knowledge of which he certainly did share with Wilson and Madison, and which by itself will fully explain the evident fact that in all his wide and varied reading of European Authorities on government, law and political science, he shows a discernment which cannot be accounted for otherwise than by his being in possession of a definite philosophy of his own. This source of thought was no other than the traditional Whig theory of government, which, as we have seen in the previous chapter, was formulated mainly on the basis of scholastic prin-

[42] Works, vol. II, p. 379.
[43] H. Jones Ford, *Alexander Hamilton*, p. 27.

ciples and set forth, as occasion demanded, against adverse theories and erroneous political views in order that the Medieval tradition of liberty embodied in English law and constitutional forms might be preserved and developed.

The philosophy of common sense was without doubt eminently calculated, under the circumstances, to keep the mind true to itself in the face of Protestant prejudice and save it from confusion when confronted with the quibbles of the sceptic, the negations of the rationalist or the emotional vagaries of the disciples of Rousseau. For those who grasped it sincerely, it would naturally be conducive to the maintenance of the single eye. But in regard to the complex problem of government it had, as a system, little to suggest that was positively constructive. As the Whig doctrines, on the other hand, are nowhere found fully expounded in any one work or set of writings, if we except Burke's tracts and speeches, the question may here be asked what evidence is there that Hamilton, Wilson and Madison knew anything of the writings of Bellarmine and Suarez? With regard to all three there is this peculiar fact to be noted and accounted for. They were strangely in agreement as to all fundamental and vital points. Their reasons for disagreeing with such authorities as they do acknowledge, are almost invariably the same and are moreover in accord with scholastic principles. Nor is there any apparent sign that long continued consultations had occurred between them previous to the time of the Federal Convention when the ideas of all three were already fairly well formed. All three were great readers. While at Princeton Madison is known to have devoted much of his time to theology with the view of exploring the evidences of Christianity, and we have it on the authority of Mr. Gaillard Hunt that there was a copy of Bellarmine in the library there at the time.[44] Many years later when Jef-

[44] Loc. cit. It is a notable fact that these men seemed entirely free from any antagonism to the Catholic religion. Writing of toleration Wilson said: "For its reception and establishment where it has been received and established, the world has been thought to owe much to the inestimable writings of Locke. To the inestimable writings of that justly celebrated man, let the tribute of applause be plenteously paid; but while immortal honors are bestowed on the name and character of Locke, why should an

ferson was thinking of the library of the University of Virginia he wrote to Madison and asked him for a list of works on theology "knowing" as he said "that in your earlier days you bestowed attention on this subject." In his answer Madison said with reference to a second request making it clear that only theology need be included, "I send you the list I had made out (covering the first five centuries), with an addition on the same paper of such books as a hasty glance of a few catalogues and my recollection suggested. Perhaps some of them may not have occurred to you, and may suit the blank you have not filled." Now the first two names on this list are those of St. Thomas Aquinas and Duns Scotus, while Bellarmine is mentioned immediately after Luther and Calvin, against whom his works were chiefly written. If Suarez is not mentioned the omission argues nothing, since his best known works would naturally be included under the head of "the moral and metaphysical part" of Divinity which Madison of set purpose did not draw on, as Jefferson had expressed himself satisfied with his own list of works in the branch.[45] As for Wilson, we have had evidence enough of the manner in which he insists on the unusual aspect of the theory that was incorporated into the Constitution, a view which was more than borne out by the difficulties encountered in trying to get others to understand the true nature of the proposed form of government as planned in the Convention. Yet nothing in Wilson's writings would lead one to suspect that he considered any part of this theory as originating with himself. On the other hand he does say in one place, "that the foundation at least of a separate, an unbiased, and an independent law education should be laid in the United States" since "by the revolution in the United States, a very great alteration—a very great improvement— . . . has taken

ungracious silence be observed with regard to the name and character of Calvert?

"Let it be known, that before the doctrine of toleration was published in Europe, the practice of it was established in America. A law in favor of religious freedom was passed in Maryland, as early as the year one thousand six hundred and forty-nine." Works, vol. I, p. 4.

[45] Works, vol. III, pp. 450, 451. For Jefferson's letter and the list see W. C. Rives' *Life and Times of Madison*, vol. I, pp. 643, 644.

place in our system of Government."[46] And Madison in a letter to Jefferson on the subject of a textbook for the Law School was evidently of the same mind when he wrote: "It is certainly very material that the true doctrines of liberty, as exemplified in our political system, should be inculcated on those who are to sustain and administer it. It is, at the same time not easy to find standard books that will be both guides and guards for the purpose. Sidney and Locke are admirably calculated to impress on young minds the right of nations to establish their own Governments, and to inspire a love of free ones, but afford no aid in guarding our Republican charters against constructive violations. The Declaration of Independence, though rich in fundamental principles, and saying everything that could be said in the same number of words, falls nearly under a like observation. The 'Federalist' may fairly enough be regarded as the most authentic exposition of the text of the Federal Constitution, as understood by the Body which prepared and the authority which accepted it. Yet it did not foresee all the misconstructions which have occurred, nor prevent some that it did foresee."[47]

In Hamilton's case there seems to be no apparent argument for any direct acquaintance on his part with the writings of the two Jesuits beyond the fact that he was a Whig and the general one of his marked agreement with the other two, together with the striking conformity of almost all his principles on Government with those of the scholastic writers. One point, however, he does make clear and that is, that whatever the source of our theory of Government, it was certainly not derived from the Votaries of Enlightment in Europe. Coming, moreover, from one who as a political thinker was second to Burke only, if not his peer, the following statements are all the more significant. He said:

"Facts, numerous and unequivocal, demonstrate that the present Era is among the most extraordinary which have occurred in the history of human affairs. Opinions, for a long time, have been gradually gaining ground, which threaten the

[46] Works, vol. I, pp. 23, 24.
[47] Works, vol. III, p. 481.

foundations of religion, morality and society. An attack was first made upon the Christian revelation, for which natural religion was offered as the substitute. The Gospel was to be discarded as a gross imposture, but the being and attributes of God, the obligations of piety, even the doctrine of a future state of rewards and punishments, were to be retained and cherished.

"In proportion as success has appeared to attend the plan, a bolder project has been unfolded. The very existence of a Deity has been questioned and in some instances denied. The duty of piety has been ridiculed, the perishable nature of man asserted, and his hopes bounded to the short span of his earthly state. Death has been proclaimed an Eternal Sleep; 'the dogma of the *immortality* of the soul a *cheat*, invented to torment the living for the benefit of the dead.' Irreligion, no longer confined to the closets of conceited sophists, nor to the haunts of wealthy riot, has more or less displayed its hideous front among all classes.

"Wise and good men took a lead in delineating the odious character of despotism, in exhibiting the advantages of a moderate and well balanced Government, in inviting nations to contend for the enjoyment of national liberty. Fanatics in political science have since exaggerated and perverted their doctrines. Theories of Government unsuited to the nature of man, miscalculating the force of his passions, disregarding the lessons of experimental wisdom, have been projected and recommended. These have everywhere attracted Sectaries, and everywhere the fabric of Government has been in different degrees undermined.

"A league has at length been cemented between the Apostles and Disciples of irreligion and of anarchy; Religion and Government have both been stigmatized as abuses; as unwarrantable restraints upon the freedom of man; as causes of the corruption of his nature, intrinsically good;[48] as sources of an artificial

[48] Wilson noted the opposite extreme from which this was in some measure a revulsion. "It has been the custom," said he, "of certain philosophers, and, I must here add, of certain divines, to represent human nature as in a state of hostility endless and uninterrupted, internal as well as external. According to these philosophers and according to these divines, he is at war with all the world as well as with himself." Works, vol. I, p. 218.

and false morality which tyrannically robs him of the enjoyment for which his passions fit him, and as clogs upon his progress to the perfection for which he was destined.

"As a corollary from these premises, it is a favorite tenet of the Sects that religious opinion of any sort is unnecessary to society; that the maxims of a genuine morality and the authority of the magistracy and the laws are sufficient and ought to be the only security for civil rights and private happiness.

"As another corollary it is occasionally maintained by the same sect that but a small portion of power is requisite to Government; that even this portion is only temporarily necessary, in consequence of the bad habits which have been produced by the errors of ancient systems; and that as human nature shall refine and ameliorate by the operation of a more enlightened plan, government itself will become useless and society will subsist and flourish free from shackles.

"If all the votaries of this new philosophy do not go the whole length of its frantic creed, they all go far enough to endanger the full extent of the mischiefs which are inherent in so wide and fatal a scheme every modification of which aims a mortal blow at the vitals of human happiness.

"The practical development of this pernicious system has been seen in France. It has served as an engine to subvert all her ancient institutions, civil and religious, with all the checks that served to mitigate the rigor of authority; it has hurried her headlong through a rapid succession of dreadful revolutions, which have laid waste property, made havoc among the arts, overthrown cities, desolated provinces, unpeopled regions, crimsoned her soil with blood, and deluged it in crime, poverty and wretchedness, and all this as yet for no better purpose than to erect on the ruin of former things a despotism unlimited and uncontrolled; leaving to a deluded, an abused, a plundered, a scourged, and an oppressed people, not even the shadow of liberty to console them for a long train of substantial misfortunes, of bitter suffering."[49]

Talleyrand well said of Hamilton "Il a diviné l'Europe."

[49] Works, vol. VIII, pp. 425-428.

7. OUR MEDIEVAL INHERITANCE OF LIBERTY

By Rev. Moorhouse F. X. Millar, S.J.

In looking for the philosophy of government to which we, in this country, are committed by our past as a nation, we should naturally turn to the Declaration of Independence and the Constitution. For as Hamilton said "After all, the instrument must speak for itself." But then he added "Yet, to candid minds, the contemporary explanation of it, by men who had a perfect opportunity of knowing the view of its framers, must operate as weighty collateral reason"[1] in the matter of explaining its construction. Because of the failure to adapt this last method with all the care and accuracy which the subject demanded, many very erroneous notions regarding the principles involved in these two documents have been widely fostered, especially by writers of textbooks. In the endeavor to maintain that ours "was an entirely new conception of governmental authority," even judicious thinkers such as David Jayne Hill find themselves reduced to fall back on some statement or other to the effect that "It was foreshadowed by a philosophy of enlightenment that disclosed the insolence and usurpation of power unregulated by law."[2] This manner of accounting for the origin of American ideas on government only strengthens the position of the radical economic determinist who with Charles A. Beard will insist that "in the absence of a critical analysis of legal evolution, all sorts of vague abstractions dominate most of the thinking that is done in the field of law."[3]

[1] Loc. cit., vol. VIII, p. 345.

[2] American World Policies, pp. 154, 151.

[3] An Economic Interpretation of the Constitution of the United States, p. 8.

The conclusion to be drawn from this observation is, of course, that we should emulate German savants by taking over their ideas and principles and those of their English and American disciples. Whereas if more pains had been devoted to a thorough study of the writings of those who framed our great legal instruments it would have been discovered that their ideas were not so much new as well tried and sound beyond any known to the "modernism" of the present age.

Of the *Declaration of Independence* Jefferson himself wrote "With respect to our rights, and the acts of the British government contravening those rights there was but one opinion on this side of the water. All American Whigs thought alike on these subjects. When forced, therefore, to resort to arms for redress, an appeal to the tribunal of the world was deemed proper for our justification. This was the object of the Declaration of Independence. Not to find out new principles, or new arguments, never before thought of, not merely to say things which had never been said before; but to place before mankind the common sense of the subject in terms so plain and firm as to command their assent and to justify ourselves in the independent stand we are compelled to take. Neither aiming at originality of principle or sentiment, nor yet copied from any particular or previous writing, it was intended to be an expression of the American mind, and to give to that expression the proper tone and spirit called for by the occasion. All its authority rests then on the harmonizing sentiments of the day, whether expressed in conversation, in letters, printed essays, or in the elementary books of public right, as Aristotle, Cicero, Locke, Sidney, etc., (sic.)"[4]

That "all American Whigs thought alike on these subjects" is clearly borne out by Hamilton in his controversy with Dr. Seabury during the course of the two years previous to the framing of the Declaration. "Apply yourself," he urges upon his adversary "without delay, to the study of the law of nature. I would recommend to your perusal, Grotius, Puffendorf, Locke, Montesquieu and Burlemaqui. I might mention other (sic)

[4] To Henry Lee, May 8, 1825. Works, vol. VIII, p. 407, Washington edition.

excellent writers on this subject; but if you attend diligently to these you will not require any others.

"There is so strong a similitude between your political principles and those maintained by Mr. Hobbes, that, in judging from them, a person might very easily *mistake* you for a disciple of his. His opinion was exactly coincident with yours, relative to man in a state of nature. He held as you do, that he was then perfectly free from all restraint of *law* and *government*. Moral obligation, according to him, is derived from the introduction of civil society; and there is no virtue but what is purely artificial, the mere contrivance of political for the maintenance of social intercourse. But the reason he ran into this absurd and impious doctrine was, that he disbelieved the existence of an intelligent, superintending principle, who is the governor, and will be the final judge, of the universe.

. . . "To grant that there is a supreme Intelligence who rules the world and has established laws to regulate the actions of His creatures, and still to assert that man, in a state of nature, may be considered as perfectly free from all restraints of *law* and *government* appears to a common understanding, altogether irreconcilable.

"Good and wise men, in all ages, have embraced a very dissimilar theory. They have supposed that the Deity from the relations we stand in to Himself and to each other, has constituted an eternal and immutable law, which is indispendably obligatory upon all mankind, prior to any human institution whatever.

"This is what is called the law of nature 'which being coeval with mankind, and dictated by God himself, is, of course, superior in obligations to any other. It is binding over all the globe, in all countries, and at all times. No human laws are of any validity, if contrary to this; and such of them as are valid derive all their authority mediately or immediately, from this original'—Blackstone.

"Upon this law depend the natural rights of mankind: the Supreme Being gave existence to man, together with the means of preserving and beautifying that existence. He endowed him with rational faculties, by the help of which to discern and

pursue such things as were consistent with his duty and interest; and invested him with an inviolable right to personal liberty and personal safety.

"Hence, in a state of nature, no man had any *moral* power to deprive another of his life, limbs and property, or liberty; nor the least authority to command or exact obedience from him, except that which arose from the ties of consanguinity.

"Hence, also, the origin of all civil government, justly established, must be a voluntary compact between the rulers and the ruled, and must be liable to such limitations as are necessary for the security of the *absolute rights* of the latter; for what original title can any man, or set of men, have to govern others, except their own consent? To usurp dominion over a people in their own despite, or to grasp at a more extensive power than they are willing to intrust, is to violate that law of nature, which gives every man a right to his personal liberty, and can, therefore, confer no obligation to obedience."

"The principle aim of society is to protect individuals in the enjoyment of those absolute rights which were vested in them by the immutable laws of nature, but which could not be preserved in peace without that mutual assistance and intercourse which is gained by the institution of friendly and social communities. Hence it follows, that the first and primary end of human laws is to maintain and regulate these *absolute rights* of individuals." (Blackstone.)

"If we examine the pretensions of Parliament by this criterion which is evidently a good one, we shall presently detect their injustice. First, they are subversive of our natural liberty, because an authority is assumed over us which we by no means assent to. And secondly, they divest us of that moral security for our lives and properties, which we are entitled to, and which it is the primary end of society to bestow. For such security can never exist while we have no part in making the laws that are to bind us, and while it may be the interest of our uncontrolled legislators to oppress us as much as possible." . . .[5]

[5] Loc. cit., vol. I, pp. 61-64. The "assent" spoken of in this last paragraph is clearly that of a definite people, viz., the colonists, living under a

"As to the degrees and modifications of that subordination which is due to the parent state, these must depend upon other things besides the mere act of emigration to inhabit or settle a distant country. These must be ascertained by the spirit of the constitution of the mother country, by the compacts for the purpose of colonizing and more especially by the law of nature, and that *supreme law* of every society—*its own happiness.*"[6]

. . . "The dependence of the colonies on Great Britain is an ambiguous and equivocal phrase. It may either mean dependence on the people of Great Britian or on the King. In the former sense, it is absurd and unaccountable; in the latter it is just and rational."[7]. . .

"The right of Parliament to legislate for us cannot be accounted for upon any reasonable grounds. The constitution of Great Britain is very properly called a limited monarchy, the people having reserved to themselves a share in the legislature, as a check upon the regal authority, to prevent its degenerating into despotism and tyranny. The very aim and intention of the democratical part, or the House of Commons, is to secure the rights of the people. Its very being depends upon those rights. Its whole power is derived from them and must be terminated by them."[8]. . .

"When we ascribe to the British House of Commons a jurisdiction over the colonies, the scene is entirely reversed.[9] All

definite constitution, viz., the English constitution, and, therefore, it is a question here of a people that has transferred "power to a king yet retain it in themselves for certain affairs." See the words of Suarez further on. Hamilton even in his early years would have been the last to hold as a general principle of government that the authority of rulers depends on the *present* assent of the people. His argument is that the pretentions of Parliament go beyond the constitution and, therefore, beyond anything assented to in the past and are being forced on the colonists without their assent in the present.

[6] *Ibid.*, p. 65.

[7] *Ibid.*, p. 66. Burke in his "Thoughts on the Cause of the Present Discontents," 1770, had said: "The virtue, spirit, and essence of a House of Commons consists in its being the express image of the feelings of the nation. It was not instituted to be a control *upon* the people, as of late it has been taught by a doctrine of the most pernicious tendency. It was designed as a control *for* the people." Works, vol. II, p. 50, 51.

[8] *Ibid.*, p. 69.

[9] Burke in his *Address to the King* declared "we are convinced, beyond

these kinds of security (which the people of Britain have for the good deportment of their representatives toward them) immediately disappear; no ties of gratitude or interest remain. Interest, indeed, may operate to our prejudice. To oppress us may serve as a recommendation to their constituents, as well as an alleviation of their own incumbrances. The British patriots may, in time, be heard to court the gale of popular favor by boasting their exploits in laying some new imposition on their American vassals, and by that means lessening the burdens of their friends and fellow subjects.''[10]

Such were the grounds for the resistance to England, first, and finally for declaring the colonies independent. Nor in this is there any trace of Rousseau or of the empty moonshine of the French Enlightenment. It is merely an appeal to ''those principles of original justice from whence alone'' as Burke said ''our title to every thing valuable in society is derived.'' There is the same distinction between liberty and liberties, between a due and an established order which we have seen to be characteristic of the Medieval theory of government. The natural law is not made a pretext for flying in the face of tradition, but forms the basis for the just claim to such rights as Englishmen had acquired in time, and of which they could not be dispossessed without their consent. Far from condemning the old order, the complaint was that in supporting Parliament in its unwarranted claims to tax the colonies the King was abusing his prerogative. Wilson in his *Considerations on the Nature*

a doubt, that a system of dependence which leaves no security to the people for any part of their freedom in their own hands cannot be established in any inferior member of the British empire, without consequently destroying the freedom of that very body in favor of whose boundless pretentions such a scheme is adopted. We know and feel that arbitrary power over distant regions is not within the competence, nor to be exercised agreeably to the forms, or consistently with the spirit of great popular assemblies. If such assemblies are called to a nominal share in the exercise of such power, in order to screen, under general participation, the guilt of desperate measures, it tends to corrupt the deliberate character of those assemblies, in training them to blind obedience; in habituating them to proceed upon grounds of fact, with which they can rarely be sufficiently acquainted, and in rendering them executive instruments of designs, the bottom of which they cannot possibly fathom.'' Works, vol. V, p. 359.

[10] *Ibid.*, 71.

and Extent of the Legislative Authority of the British Parliament called to mind the *fact* that "sensible that prerogative, or discretionary power of acting where the laws are silent, is absolutely necessary, and that this prerogative is most properly intrusted to the executor of the laws, they (the earlier representatives of the commons) did not oppose the exercise of it, while it was directed towards the accomplishment of its original end: but sensible likewise that the good of the State was this original end, they resisted, with vigor, every arbitary measure, repugnant to law, and unsupported by maxims of public freedom or utility,"[11] and again in his *Speech at the Convention in Pennsylvania* (1775), he said: "The government of Britain . . . was never an arbitrary government: our ancestors were never inconsiderate enough to trust those rights, which God and nature had given them, unreservedly into the hands of their princes. However difficult it may be in other states, to prove an original contract subsisting in any other manner, and on any other conditions, than are naturally and necessarily implied in the very idea of the first institution of a state; it is the easiest thing imaginable, since the revolution of 1688, to prove it in our constitution, and to ascertain some of the material articles, of which it consists. It has been often appealed to: it has been often broken, at least on one part; it has been often renewed: it has often been confirmed: it still subsists in its full force: "it binds the King as much as the meanest subject." (Bolingbroke: Patriot King.) The measures of his power, and the limits, beyond which he cannot extend it, are circumscribed and regulated by the same authority, and, with the same precision, as the measures of the subject's obedience, and the limits beyond which he is under no obligation to practice it, are fixed and ascertained. Liberty is, by the constitution, of equal stability, or equal antiquity, and of equal authority with prerogative. The duties of the King and those of the subject are plainly reciprocal: they can be violated on neither side, unless they are performed on the other. The law is the common standard, by which the excesses of prerogative as well as the excesses of liberty are to be regulated

[11] Works, vol. II, p. 519.

and reformed." Wilson then concludes his speech by declaring that because the King had acted unconstitutionally "the distinction between him and his ministers has been lost: but they have not been raised to his situation: he has sunk to theirs."[12]

Thus the first argument was "that both the letter and the spirit of the British constitution justify . . . resistance."[13] In this connection Suarez had said "What Bellarmine said quoting Navarrus, namely: that the people never so transfer their power to a ruler as not to retain it habitually (habitu) and in such a manner as to be capable of using it in certain cases . . . does not furnish grounds for a people to proclaim itself free at will. For Bellarmine did not say simply that the people retain habitual power *to perform whatever acts they please and whenever they please* but with great restriction and circumspection he said *in certain cases* etc., that is to-day, according to the conditions of a previous contract or according to the exigencies of natural justice, for compacts and just agreements must be kept. Therefore if a people transfers power to a king yet retain it in themselves for certain affairs or for things of greater moment, it is allowable for them to use it and to maintain their right. Such a right, however, ought to be sufficiently ascertained either from ancient and authentic documents or from immemorial custom. By the same reason if the King changes his just power into tyranny by abusing it to the manifest detriment of the state the people may have recourse to the natural power of self-defense for they never deprive themselves of this."[14]

In keeping with the proviso laid down by Suarez that "such a right ought to be sufficiently ascertained" both Hamilton and Wilson presented a set of facts in law and history. Each set of facts though different were certainly sufficient to establish the claim that, granting the principle of consent, Parliament had no right to tax the colonies. Wilson in the advertisement to the *Considerations on the Legislative Authority of the British*

[12] *Ibid.*, pp. 557, 565.
[13] *Ibid.*, p. 564.
[14] Defensio Fidei Catholicæ, III, c. 3, n. 3.

Parliament even went so far as to state candidly: "Many will, perhaps, be surprised to see the legislative authority of the British Parliament over the colonies denied *in every instance.* Those the writer informs, that, when he began this piece, he would probably have been surprised at such an opinion himself; for that it was the *result,* and not the *occasion,* of his disquisitions. He entered upon them with a view and expectation of being able to trace some constitutional line between those cases in which we ought, and those in which we ought not, to acknowledge the power of Parliament over us. In the prosecution of his inquiries, he became fully convinced that such a line does not exist; and that there can be no medium between acknowledging and denying that power in *all cases.*"[15]

If from all this we turn to the Declaration of Independence and study its theoretic portion in the light of what we have seen, it will appear clearly that it is in truth not an assertion of "new principles or new arguments" but a declaration of principles rooted in the very foundation of Christian civilization. In Jefferson's splendid synthesis they stand out to the world not merely as the legitimate ground for our separation from England, where they were refused recognition, but as the true Medieval and Christian norm of all just government.

"We hold these truths to be self-evident, that all men are created equal, that they are endowed, by their Creator, with certain unalienable rights, that among these are life, liberty, and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed, that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute new government laying its foundation on such principles, and organizing its powers in such form as to them shall seem most likely to effect their safety and happiness."

Even the term "happiness" is not to be understood here in the Utilitarian sense of Bentham's "Greatest happiness of the greatest number." Suarez had said "As laws are imposed on the community, so they should be enacted for the good of the

[15] *Ibid.,* p. 503.

community, otherwise they would be in conflict with the due order of things."[16] And this he proved by arguing that since a law is a common rule of moral actions it should have the same first principle as have our moral actions, which is our final end or happiness. In his *Considerations* Wilson stated, even before Jefferson, that "all men are by nature, equal and free: no one has a right to any authority over another without his consent: all lawful government is founded on the consent of those who are subject to it; such consent was given with a view to ensure and to increase the happiness of the governed, above what that could enjoy in an independent and unconnected state of nature. The consequence is, that the happiness of the society is the *first* law of every government."[17] We have already seen how Hamilton repeated this last statement.[18] But Madison, more explicit than either of these, declared: "There is no maxim, in my opinion, which is more liable to be misapplied, and which, therefore, more needs elucidation, than the current one, that the interest of the majority is the political standard of right and wrong. Taking the word 'interest' as synonymous with 'ultimate happiness,' in which sense it is qualified with every necessary moral ingredient, the proposition is no doubt true. But taking it in the popular sense as referring to immediate augmentation of property and wealth nothing can be more false. In the latter, it would be the interest of the majority in every community to despoil and enslave the minority of individuals."[19]

With regard to the preamble to the Declaration of Independence, taken as a whole, Mr. Gaillard Hunt, chief of division of manuscripts, Library of Congress, has instituted an interesting comparison between it and the passage summarizing Bellarmine's doctrine in Filmer's *Patriarcha*, which we have already seen.[20] After pointing out the fact that there is a copy of this latter work among the books of Jefferson still kept together

[16] De Legibus, I, c. 7, n. 4.

[17] *Ibid.*, pp. 507, 508.

[18] Internal evidence would seem to show that Hamilton had Wilson's *Considerations* before him when he wrote the *Farmer Refuted.*

[19] Letter to J. Monroe, 1786, vol. I, pp. 250, 251, Congress edition.

[20] Catholic Historical Review, vol. III (1917), pp. 276-289.

in the Library of Congress, he remarks very truly that neither in Sidney nor in Locke nor in the writings of any other author with whom Jefferson was familiar is there as complete an epitome of the doctrine he announced. But Mr. Hunt does not seem to have known that Jefferson also wrote the preamble to the Virginia Declaration of Rights. This fact is attested to by Jefferson himself in a letter to Judge Augustus B. Woodward, April 3, 1825, where he says "The fact is unquestionable, that the Bill of Rights, and the Constitution of Virginia, were drawn originally by George Mason one of our really great men, and of the first order of greatness. The history of the preamble to the latter is this: I was then at Philadelphia with Congress, and knowing that the Convention of Virginia was engaged in forming a plan of government, I turned my mind to the same subject, and drew a sketch or outline of a constitution, with a preamble, which I sent to Mr. Pendleton, president of the convention, on the mere possibility that it might suggest something worth incorporation into that before the convention. He informed me afterwards by letter, that he received it on the day on which the committee of the whole had reported to the House the plan they had agreed to; that that had been so long in hand, so disputed inch by inch, and the subject of so much altercation and debate; that they were worried with the contentions it had produced, and could not, from mere lassitude, have been induced to open the instrument again; but that being pleased with the preamble to mine, they adopted it in the House, by way of amendment to the report of the committee; and thus my preamble became tacked to the work of George Mason. The Constitution, with the preamble, was passed on the 29th of June, and the Committee of Congress had only the day before that reported to that body the draught of the Declaration of Independence. The fact is, that the preamble was prior in composition to the Declaration; and both having the same object, of justifying our separation from Great Britain, *they used necessarily the same materials, and hence their similitude.*"[21]

As Jefferson wrote this preamble it read: "That all men are born equally free and independent and have certain inherent

[21] Works, vol. VIII, pp. 705, 706, Washington edition. Italics inserted.

natural rights, of which they cannot, by any compact, deprive or divest their posterity; among which are the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety.

"That power is, by God and nature, vested in, and consequently derived from the people; that magistrates are their trustees and servants, and at all times amenable to them.

"That government is, or ought to be instituted for the common benefit and security of the people, nation or community. Of all the various modes and forms of government that is best, which is capable of producing the greatest degree of happiness and safety, and is most effectually secured against the danger of maladministration. And that whenever any government shall be found inadequate, or contrary to these purposes, a majority of the community hath an indubitable, inalienable and indefeasible right to reform, alter or abolish it, in such manner as shall be judged most conducive to the public weal."

Now if allowance be made for the extreme view of this last statement with regard to the inalienable rights of a majority,[22] and if the clause "that magistrates are their trustees and servants and at all times amenable to them" be understood as a positive enactment and not as a declaration of natural right, these three paragraphs bear a no less striking resemblance to the passage in Filmer than does the theoretic portion of the Declaration of Independence; and since the author of the one was also the author of the other it is hard to avoid the conclusion that, with a copy of Filmer in his possession, he must have included the latter's summary of Bellarmine among the materials used in the composition of both Declarations. If so then the American denial of the omnicompetence of Parliament is

[22] Burke said with great truth: "We are so little affected by things which are habitual that we consider this idea of the decision of a *majority* as if it were a law of our original nature; but such constructive whole, residing in a part only, is one of the most violent fictions of positive law, that ever has been or can be made on the principles of artificial incorporation. Out of civil society nature knows nothing of it; nor are men, even when arranged according to civil order, otherwise than by a very long training, brought at all to submit to it." *Appeal from the New to the Old Whigs;* Works, vol. V, p. 97.

no more than a reassertion of Bellarmine and Suarez' denial of the Divine Right of Kings.

But after all the Declaration merely proclaimed our freedom from tyranny and our right to just rule. The sound enunciation of principles it contains are the major premise to the conclusion "that these United Colonies are, and of right ought to be, free and independent States; that they are absolved from all allegiance to the British Crown, and that all political connection between them and the State of Great Britain is, and ought to be, totally dissolved." But this is not liberty. Burke spoke the mind of all Whigs when he explained that "civil freedom is not, as many have endeavored to persuade you, a thing that lies hid in the depth of abstruse science. It is a blessing and a benefit, not an abstract speculation; and all the just reasoning that can be put upon it is of so coarse a texture as perfectly to suit the ordinary capacities of those who are to enjoy, and of those who are to defend it. Far from any resemblance to those propositions in geometry and metaphysics, which admit no medium, but must be true or false in all their latitude,[23] social and civil freedom, like all other things in common life, are variously mixed and modified, enjoyed in very different degrees, and shaped into an infinite diversity of forms, according to the temper and circumstances of every community. The

[23] Writing for those of his own time in France Buffier said: "The habit of subjecting their thought to established law has caused them (jurisconsults) to frequently confuse these two expressions 'it is the law' and 'it is reason.' It is quite true that the saying, 'it is the law' bears with it as a consequence that 'it is reason' to submit to it in this country, without regard to the reasons one might oppose to it, even were they better than the law in force. But instead of stopping here they look upon the law in force as holding the place of universal reason." Oeuvres, p. 213.

Burke wrote in the same sense when he said: "Politics ought to be adjusted, not to human reasonings, but to human nature; of which the reason is but a part, and by no means the greatest part." Works, vol. I, p. 335.

James Wilson, no less truly, said: "The laws, which God has given us, are strictly agreeable to our nature; they are adjusted with infallible correctness to our perfection and happiness. On those, which we make for ourselves, the same character, as deeply and as permanently as possible, ought to be impressed. But how, unless we study and know our nature shall we make laws fit for it, and calculated to improve it?" Works, vol. I, p. 210.

extreme of liberty (which is its abstract perfection, but its real fault) obtains nowhere, nor ought to obtain anywhere; because extremes, as we all know, in every point which relates either to our duties or satisfactions in life, are destructive both to virtue and enjoyment. Liberty, too, must be limited in order to be possessed."[24]

The truth of this was fully displayed by the condition that prevailed in the Colonies at the cessation of hostilities. While war lasted they acted more or less as one; but with this common motive gone and with the former bond of British rule now removed, the separate Colonies, none of which had ever acted in the capacity of an independent sovereign State, threatened to dissolve into anarchy. Some form of common government was clearly necessary. But the situation was new, and in the same sense as Burke declared in his speech at Bristol that "in a discordancy of sentiments it is better to look to the nature of things than to the humors of men,"[25] Washington, at the opening of the convention, when some of the members were advocating half measures as more likely to meet the approval of the people than any thoroughgoing reform, saved the chances for "liberty connected with order"[26] by his bold and characteristic remark: "It is too probable that no plan we propose will be adopted. Perhaps another dreadful conflict is to be sustained. If to please the people, we offer what we ourselves disapprove, how can we afterwards defend our work? Let us raise a standard to which the wise and the honest can repair. The event is in the hand of God."

That the principles of government proclaimed in the Declaration of Independence were to form the basis of the new order about to be *established* was a foregone conclusion. But the manner in which they were applied by those who drew up our Constitution involved a philosophic grasp far beyond anything that the mere knowledge of the *experience* of the past could supply. When defending the work of the Federal Convention before the State Convention of Pennsylvania, Wilson said: "The

[24] Works, vol. II, p. 274.
[25] Third Speech at Bristol, Works, vol. III, p. 3.
[26] Burke, *First Speech at Bristol, ibid.*, vol. II, p. 157.

science even of government itself, seems yet to be almost in its state of infancy. Governments in general have been the result of force, of fraud, and accident. After a period of six thousand years has elapsed since the creation, the United States exhibit to the world, the first instance, as far as we can learn, of a nation unattacked by external force, unconvulsed by domestic insurrections, assembling voluntarily, deliberating fully, and deciding calmly, concerning that system of government under which they would wish that they and their posterity should live. The ancients so enlightened on other subjects were very uninformed with regard to this. They seem scarcely to have had any idea of any other kinds of governments, than the three simple forms, designed by the epithets monarchical, aristocratical and democratical. I know that much and pleasing ingenuity has been exerted in modern times, in drawing entertaining parallels between some of the ancient constitutions and some of the mixed governments that have since existed in Europe. But I much suspect that, on strict examination, the instances of resemblance will be found to be few and weak; to be suggested by the improvements, which in subsequent ages, have been made in government and not to be drawn immediately from the ancient constitutions themselves, as they were intended and understood by those who framed them. . . . One thing is very certain, that the doctrine of representation in government was altogether unknown to the ancients. Now the knowledge and practice of this doctrine is, in my opinion, essential to every system that can possess the qualities of freedom, wisdom and energy.

"It is worthy of remark, and the remark may, perhaps, excite some surprise, that representation of the people is not, even at this day, the sole principle of any government in Europe. Great Britain boasts, and she may well boast, of the improvement she has made in politics, by the admission of representation: for the improvement is important as far as it goes; but it by no means goes far enough. Is the executive power of Great Britain founded on representation? This is not pretended. Before the Revolution, many of the Kings claimed to reign by divine right, and others by hereditary right; and even at the

Revolution, nothing farther was effected or attempted, than the recognition of certain parts of an original contract, supposed at some remote period to have been made between the King and the people. A contract seems to exclude, rather than to imply delegated power. The judges of Great Britain are appointed by the Crown. The judicial authority, therefore, does not depend upon representation, even in the most remote degree. Does representation prevail in the legislative department of the British government? Even here it does not predominate; though it may serve as a check. The Legislature consists of three branches: the king, the lords and the commons. Of these only the latter are supposed by the constitution to represent the authority of the people. The short analysis clearly shows, to what a narrow corner of the British Constitution the principle of representation is confined. I believe it does not extend farther, if so far, in any other government in Europe. For the American States were reserved the glory and the happiness of diffusing this vital principle through all the constitutional parts of government. Representation is the chain of communication between the people, and those to whom they have committed the exercise of the powers of government. This chain may consist of one or more links; but in all cases it should be sufficiently strong and discernible."[27]

Later after the Constitution had been ratified, Hamilton explained how "in the theory of all the American Constitutions, offices are holden of the government, in other words, of the people *through* the government. The appointment is indeed confided to a particular organ, and in instances in which it is not otherwise provided by the Constitution or the laws, the removal of the officer is left to the pleasure or discretion of that organ. But both these acts suppose merely an instrumentality of the organ, from the necessity or expediency, of the people's acting in such case by an agent. They do not suppose the substitution of the agent to the people, as the object of the fealty or allegiance of the officer."[28]

We have seen already how Suarez was the first to admit clearly

[27] Works, vol. I, pp. 530-533.
[28] Works, vol. VIII, pp. 354-355.

the legitimacy of such a form of government. But for the practical working out of its conception much else of a more purely theoretic character must be presupposed in the minds of those who effected the task. For the very idea implies an exceedingly definite theory of the true nature of the State and its limitations. In the former chapter it was shown how thoroughly lacking the ancients were in this regard. By way of recapitulation and corroboration of what was there maintained we give the following from Francis Lieber. "The ancient science of politics is what we would term the art of government, that is 'the art of regulating the State, and the means of preserving and directing it.' The ancients set out from the idea of the State, and deduce every relation of the individual to it from this first position. The moderns (?) acknowledge that the State, however important and indispensable to mankind, however natural, and though of absolute necessity, still is but a means to obtain certain objects, both for the individual and for society collectively, in which the individual is bound to live by his nature. The ancients had not that which the moderns (?) understand by *jus naturale*, or the law which flows from the individual rights of man as man, and serves to ascertain how by means of the State, those objects are obtained which justice demands for every one. On what supreme power rests, what the extent and limitations of supreme power ought to be according to the fundamental idea of the State,—these questions have never occupied the ancient votaries of political science."[29]

But in a footnote Lieber adds: "This was written in the year 1837. Since then, events have occurred in France which may well cause the reader to reflect whether, after all, the

[29] On Civil Liberty and Self Government, pp. 46-47. Hamilton likewise noted this fact. In the convention of New York he reminded those present that, "The ancient democracies, in which the people themselves deliberated, never possessed one feature of good government. Their very character was tyranny; their figure deformity. When they assembled, the field of debate presented an ungovernable mob, not only incapable of deliberation, but prepared for every enormity. In these assemblies the enemies of the people brought forward their plans of ambition systematically. They were opposed by their enemies of another party; and it became a matter of contingency whether the people subjected themselves to be led blindly by one tyrant or by another." Works, vol. II, p. 22.

author was entirely correct in drawing this peculiar line between antiquity and modern times." He might just as well have included England and Germany in this remark. For Bentham had already laid the cornerstone of the modern English Utilitarian system of government with the assertion that "the *field*, if one may say so, of the supreme governor's authority, though not *infinite* must unavoidably, I think, *unless where limited by express convention* (whereby one State has, upon *terms*, submitted itself to the government of another), be allowed to be indefinite."[30] While in Germany where the influence of Roman law in its Pagan form was dominant, in consequence of the writings of Grotius,[31] Puffendorf and Wolff, strange notions as to the personality of the State had already been enunciated. As Maitland, one of the English disciples of the German school, has said "The adjectives which are often used to qualify this personality are open to serious objection, since they seem to speak to us of some trick or exploit performed by lawyers and to suggest a wide departure of legal theory from fact and common opinion."[32] The root of this confusion was that in Roman law "personality" was used to mean a privilege conferred upon the individual by the State at the moment he became a citizen. Not being inherent anywhere it could be no more than a *mere* fiction emptied of all reality. The result of this is well

[30] A Fragment on Government, p. 217, edited by F. C. Montague.

[31] Both Hamilton and Wilson were aware of the grave defects in Grotius. Speaking of the principles of Roman law the first said: "A deference for those maxims has misled writers who have professionally undertaken to teach the principles of national ethics. . . . We find the learned Grotius quotes and adopts, as the basis of his opinions, the rules of Roman law; though he in several particulars, qualifies them by the humane innovations of later times." Camillus, Works, vol. X, p. 427.

Wilson writing explicitly of Grotius said: "He was unfortunate in not setting out on right and solid principles. His celebrated book of the Rights of War and Peace is indeed useful; but it ought not to be read without a due degree of caution: nor ought all his doctrines to be received, without the necessary grains of allowance." Works, vol. I, 131.

This is particularly interesting in view of the fact that the reason alleged by Andrew D. White, the American representative at The Hague. for the exclusion of Pope Leo XIII from the conferences, was that the De Jure Belli ac Pacis was on the Index at the time; which simply meant that it was "not to be read without a due degree of caution."

[32] History of English Law, vol. I, p. 489.

summed up by Johann Gustav Droysen in his *Outline of the Principles of History* where he says "The law of authority is valid in the political world like that of gravity in the world of matter. . . . Only the State has the duty or the right to be the authority in this sense. Wherever justice, property, society, wherever even the church, the people or the community come into the position of authority, the nature of the State is either not yet discovered or lost in degeneracy. Public authority is highest where the fullest labor, health and freedom of all the moral spheres feed it. The State is not related to the other moral spheres merely as they to one another, but embraces them all within its own scope. Under its protection and laws, under its guardianship and responsibility they all move forward to its salvation or ruin.

"The State is not the sum of individuals whom it comprehends, nor does it arise from their will, nor does it exist on account of their will."

In diametric opposition to this Suarez had maintained, when explaining how it is possible for a law to have reference to a single individual and yet be a true law, that "law applies to a person (meaning one who is *sui juris, i. e.,* endowed with intellect and free will) therefore it has reference primarily to a true person rather than to a fictitious one, for fiction always supposes the truth of which it is an imitation. But a community is a fictitious person whereas each individual man is a true person."[33] Burke, again, in the course of an argument directed against certain radical views, that were showing their head in his day, declared: "they who plead an absolute right (to representation) cannot be satisfied with anything short of personal representation, because all *natural* rights must be the rights of individuals as by *nature* there is no such thing as politic or corporate personality, all these ideas are mere fictions of law, they are creatures of voluntary institution; men as men are individuals, and nothing else."[34] Finally James Wilson stated the correct American doctrine implicit in our Constitution. "Persons," said he, "are divided into two kinds—natural and arti-

[33] De Legibus, I, c. 6, n. 7.
[34] Works, vol. III, p. 353.

ficial. Natural persons are formed by the great Author of nature. Artificial persons are the creatures of human sagacity and contrivance; and are framed and intended for the purposes of government and society." Then a few pages further on he expands this into a definition of the State which reads: "In free States, the people form an artificial person or body politic, the highest and noblest that can be known. They form that moral person . . . *i. e.,* a complete body of free natural persons, united together for their common benefit as having an understanding and a will; as deliberating, and resolving, and acting; as possessed of interests which it ought to manage; as enjoying rights which it ought to maintain; and as lying under obligations, which it ought to perform. To this moral person, we assign by way of eminence, the dignified appellation of *State.*"[35]

The manner in which this idea was applied in the framing of the Constitution has already been described in the words of Wilson and of Hamilton, but the theory in the case, together with Wilson's thoroughly Suaresian *point of view* in the matter, is well brought out in the following where, treating of the question of sovereignty, he argues "Let us turn our eyes, for a while from books and systems: let us fix them on men and things. While those, who were about to form a society, continued separate and independent men, they possessed separate and independent powers and rights. When the society was formed, it possessed jointly all the previously separate and independent powers and rights of the individuals who formed it and all the other powers and rights, which result from the social union. The aggregate of these powers and these rights compose the sovereignty of the society or nation. In the society or nation this sovereignty originally exists. For whose benefit does it exist? For the benefit of the society or nation. Is it necessary for the benefit of the society or nation, that the moment it exists, it should be transferred?—This question ought, undoubtedly, to be seriously considered, and, on the most solid grounds, to be resolved in the affirmative, before the transfer is made. Has this ever been done? Has it ever been evinced, by un-

[35] Works, vol. II, pp. 3, 6.

answerable arguments, that it is *necessary* to the benefit of a society to transfer all those rights and powers, which the members once possessed separately, but which the society now possesses jointly? I think such a position has never been evinced to be true. Those powers and rights were, I think, collected to be exercised and enjoyed, not to be alienated and lost. All these powers and rights, indeed, cannot, in a numerous and extended society, be exercised personally; but they may be exercised by representation."[36]

The Constitution as first proposed was intended as a resolution of this problem in the sense that instead of chartered liberties granted by the Crown, as had been the case under the rule of Kings in England since before the days of Magna Charta, there was to be henceforth in the United States chartered powers granted by the people to their government. It was for this reason that those who understood this new principle most clearly insisted that there should be no question of a Bill of Rights since the very idea of reserving anything would only tend to confusion, as it would give color to the alien notion that the government possessed powers not delegated.

Beyond the problem, however, of determining the practical basis of government on the ground of solid theoretic principle there was the further question of settling the character of the union that should exist among the Colonies. Wilson, again, in the State Convention of Pennsylvania gave the best outline of the plan proposed to the people for adoption. Among his many observations on this topic he pointed out that "a division of the United States into a number of separate confederacies would

[36] *Ibid.*, vol. I, pp. 168, 169. Italics inserted. Locke generalized too exclusively from the single fact before him—the English government of his own day—to contemplate the possibility of the people retaining power in its own hands. Suarez, as we have seen above, did contemplate such a possibility and admitted its legitimacy under certain circumstances. Locke's doctrine of the "executive power of the law of nature" on the other hand contradicts fundamental principles in the scholastic writers and furnished grounds for the Lockians, previously mentioned, and for Rousseau to claim that the aggregate of individuals contracting into society *cannot* surrender authority to the government. By the use of the word "necessary" Wilson shows his agreement with Suarez, viz., that it is a question of contingent fact or of the *legitimate* agreement of a people to determine its form of government in this particular manner.

probably be an unsatisfactory and an unsuccessful experiment. The remaining system which the American States may adopt is, a union of them under one confederate republic. It will not be necessary to employ much time or many arguments to show that this is the most eligible system that can be proposed. By adopting this system, the vigor and decision of a wide-spreading monarchy may be joined with the freedom and beneficence of a contracted republic. The extent of territory, the diversity of climate and soil, the number, and greatness, and connection of lakes and rivers, with which the United States are intersected and almost surrounded, all indicate an enlarged government to be fit and advantageous for them. The principles and dispositions of their citizens indicate, that in this government liberty shall reign triumphant. Such indeed have been the general opinions and wishes entertained since the era of our independence. If those opinions and wishes are as well founded as they are general, the late convention were justified in proposing to their constituents one confederate republic, as the best system of national government for the United States."[37] Several months later Hamilton also insisted in the convention of New York that "while the Constitution continues to be read, and its principles known, the States must by every rational man, be considered as essential component parts of the union; and therefore, the idea of sacrificing the former to the latter is totally inadmissible."[38]

It has generally been thought that the idea of a conferedate republic was suggested to the minds of those who framed the Constitution by Montesquieu and it is no doubt true that they did quote him. But the sense which they attributed to the term in its relation to what was actually set down in the plan for the new established order of government was something very foreign to the mind of Montesquieu. Luther Martin made this clear when in his *Letter on the Federal Convention* he complained that "a majority of the convention hastily and inconsiderately, without condescending to make a fair trial, in their great wisdom, deciding that a kind of government which a

[37] *Ibid.*, pp. 537, 538.
[38] Works, vol. II, p. 45.

Montesquieu and a Price have declared the best calculated of any to preserve internal liberty and to enjoy external strength and security, and the only one by which a large continent can be connected and united consistent with the principles of liberty, was totally impracticable, and they acted accordingly."[39] The fact was that Montesquieu's idea which was the old idea of confederate sovereign States united on a basis of compact did not answer the problem as it stood out before the majority in the convention. Wilson expressed what seems to have been the prevailing ground for decision when explaining how "our wants, our talents, our affections, our passions, all tell us that we were made for a state of society. But a state of society could not be supported long or happily without some civil restraint. It is true that in a state of nature, any one individual may act uncontrolled by others; but it is equally true that, in such a state, every other individual may act uncontrolled by him. Amidst this universal independence the dissessions and animosities between interfering members of the society would be numerous and ungovernable. The consequence would be, that each member, in such a natural state, would enjoy less liberty, and suffer more interruption, than he would in a regulated society. Hence the universal introduction of government of some kind or other into the social state. The liberty of every member is increased by this introduction, for each gains more by the limitation of the freedom of every other member, than he loses by the limitation of his own. The result is, that civil government is necessary to the perfection and happiness of man. In forming this government, and carrying it into execution, it is *essential* that the *interest* and *authority* of the whole community should be binding on every part of it." Then having noted that just as civil government is necessary to the perfection of society so civil liberty is necessary to the perfection of civil government he proceeds to explain this last by describing it in its nature and kinds. Said he: "Civil liberty is natural liberty itself, divested only of that part, which placed in the government, produces more good and happiness to the community, than if it had remained in the individual. Hence it follows, that civil liberty,

[39] Elliot's Debates, vol. I, p. 405.

while it resigns a part of natural liberty, retains the free and generous exercise of all the human faculties so far as it is compatible with the public welfare.[40]

"In considering and developing the nature and end of the system before us, it is necessary to mention another kind of liberty, which has not yet, as far as I know, received a name. I shall distinguish it by the appellation of *federal liberty*. When a single government is instituted, the individuals of which it is composed surrender to it a part of their natural independence, which they before enjoyed as men. When a confederate republic is instituted, the communities of which it is composed surrender to it a part of their political independence, which they before enjoyed as states. The principles which directed, in the former case, what part ought to be retained, will give similar directions in the latter case. The states should resign to the national government that part, and that part only, of their political liberty, which, placed in that government, will produce more good to the whole, than if it had remained in the several states. While they resign this part of their political liberty, they retain the free and generous exercise of all their other faculties as states, so far as is compatible with the welfare of the general and superintending confederacy."[41]

We have seen already how this idea of subordinate sovereign powers, with sovereignty derived from the same source whence that of the central supervising power is held, is found in Bellarmine and how closely Wilson's application of the principle of *consent* to the question of the division of sovereignty tallies with his. But the clear distinction between the old idea of Montesquieu and the new American theory of a confederate republic

[40] This is not to be understood in Spencer's sense that "every man may claim the fullest liberty to exercise his faculties compatible with the possession of like liberty by every other man." Social Statics (1892), p. 36, but should be read in the light of Madison's notable sentence: "If justice, good faith, honor, gratitude, all the other qualities which ennoble the character of a nation, and fulfil the ends of government, be the fruits of our establishments, the cause of liberty will acquire a dignity and lustre which it has never yet enjoyed; and an example will be set which cannot but have the most favorable influence on the rights of mankind." Works, vol. IV, p. 453.

[41] Works, vol. I, pp. 535, 536.

was stated even more explicitly by Madison who considered "the difference between a system founded on the legislatures only, and one founded on the people, to be the true difference between a *league* or *treaty,* and a constitution. The former, in point of moral *obligation,* might be as inviolable as the latter. In point of *political operation,* there were two important distinctions in favor of the latter. First, a law violating a treaty ratified by a pre-existing law might be respected as a law, though an unwise or perfidious one. A law violating a constitution established by the people themselves would be considered by the judges as null and void. Secondly, the doctrine laid down by the law of nations in the case of treaties is, that a breach of any one article by any of the parties frees the other parties from their engagements. In the case of a union of people under one constitution, the nature of the fact has always been understood to exclude such an interpretation."[42]

Such then was the theory which, beginning with the principles enunciated in the Declaration of Independence, was finally evolved into the brief but comprehensive statement.

"We the People of the United States, in order to form a more perfect Union, establish Justice, insure domestic tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America."

As Madison so well expressed it "in proportion to the importance of the instruments, every word of which decided a question between power and liberty; in proportion to the solemnity of acts proclaiming the will, and authenticated by the seal of the people, the only *earthly* source of authority, ought to be the vigilance with which they are guarded by every citizen in private life, and the circumspection with which they are executed by every citizen in public trust."[43] That there was absolutely nothing of Rousseau in all this or of Rousseau's notion of the "general will" is perfectly evident, not merely from what has been shown thus far, but from the remarks of Madison

[42] Foster on the Constitution, vol. I, p. 95.
[43] Works, vol. IV, pp. 467, 468. Italics ours.

himself, when, writing on the question of universal peace, he said: "Wars may be divided into two classes; one flowing from the mere will of the government; the other according with the will of the society itself.

"Those of the first class can no otherwise be prevented than by such a reformation of the government as may identify its will with the will of the society. The project of Rousseau (of a confederation of sovereigns, under a council of deputies) was, consequently, as preposterous as it was impotent. Instead of beginning with an external application, and even precluding internal remedies, he ought to have commenced with, and chiefly relied on, the latter prescription.

"He should have said, whilst war is to depend on those whose ambition, whose revenge, whose avidity, or whose caprice may contradict the sentiment of the community, and yet be controlled by it; whilst war is to be declared by those who are to spend the public money, not by those who are to pay it, by those who are to direct the public forces, not by those who are to support them; by those whose power is to be raised, not by those whose chains may be riveted, the disease must continue to be *hereditary*, like the government of which it is the offspring. As the first step towards a cure, the government itself must be regenerated. Its will must be made subordinate to, or rather the same with the will of the community.

"Had Rousseau lived to see the Constitutions of the United States and of France (?), his judgment might have escaped the censure to which his project has exposed it.

"The other class of wars, corresponding with the public will, are less susceptible of remedy."

"There are antidotes, nevertheless, which may not be without their efficacy. As wars of the first class were to be prevented by subjecting the will of the government to the will of the society, those of the second can only be controlled by *subjecting the will of the society to the reason of the society;* by establishing permanent and constitutional maxims of conduct, which may prevail over occasional impressions, and inconsiderate pursuits."[44]

[44] *Ibid.*, p. 471. Italics inserted.

But even this was not held to be ultimate, for reason itself is not to be understood here in the sense in which Frenchman of the Enlightenment used it. Suarez had said with regard to the derivation of the power to make laws: "The common opinion seems to be that this power is granted immediately by God as the author of nature so that men, as it were, dispose the matter and constitute the subject capable of such a power; while God, as it were, supplies the form by giving it. For granted the will of a number of men to unite in forming a body politic it is not in the power to prevent such a jurisdiction (since to will to form a society without any power to regulate it is to will a contradiction). Thus in marriage the husband is head over the wife in consequence of the determination of the Author of nature and not as a result of the wife's will in the matter. For though they freely contract the bond of matrimony nevertheless, once it is contracted they cannot prevent that superiority properly resides in the husband. Therefore, this power of jurisdiction is immediately from God since it has no prior or immediate existence in any other. Another proof is that this power includes certain acts which seem to exceed all human faculties in so far as they are discoverable in single individuals, which is a sign that this power is not derived from men but from God. The first of these is capital punishment. As God alone is master of life, He alone could grant this power. . . . Then there is the power the legislator has of binding in conscience which seems, particularly to pertain to the power of God. Finally there is the power of avenging injuries done to individuals which must come from God otherwise men might usurp other methods of avenging injuries, which is contrary to natural justice. . . . This power is granted by God not through any act or concession distinct from creation, since such a concession would have to be made known by revelation which is clearly not the case. Besides under such conditions this power of jurisdiction would not be a natural power. It is given, therefore, as one of the properties consequent to nature, that is: by means of a dictate of reason manifestive of the fact that God has made sufficient provision for the human race and

consequently has given it whatever power is necessary for its conservation and proper government."[45]

In thorough conformity with this, Washington, in his *Farewell Address* declared:

"To the efficacy and permanency of your Union, a government for the whole is indispensable.—No alliances, however strict between the parts can be an adequate substitute.—They must inevitably experience the infractions and interruptions which all alliances in all times have experienced. Sensible of this momentous truth, you have improved upon your first essay, by the adoption of a Constitution of Government, better calculated than your former for an intimate union and for the efficacious management of your common concerns.—This government, the offspring of your own choice uninfluenced and unawed, adopted upon full investigation and mature deliberation, completely free in its principles, in the distribution of its powers, uniting security with energy, and containing within itself a provision for its own amendment has a just claim to your confidence and your support.—Respect for its authority, compliance with its laws, acquiescence in its measures, are duties enjoined by the fundamental maxims of true liberty.—The basis of our political systems is the right of the people to make and to alter their Constitutions of Government.—But the Constitution which at any time exists, 'till changed by the explicit and authentic act of the whole people, *is sacredly obligatory on all.*—The very idea of the power and the right of the People to establish Government *presupposes the duty of every individual to obey the established Government.*"

From the original draft of this address, which was written by Hamilton, it is clear that the latter went even further. In a passage that Washington seems to have amended slightly for evident prudential reasons Hamilton said: "In all those dispositions which promote political happiness, religion and morality are essential props. In vain does he claim the praise of patriotism, who labors to subvert and undermine these great pillars of human happiness, these firmest foundations of the duties of men and citizens. The mere politician, equally with

[45] De Legibus, III, c. 3, n. 4, 5.

the pious man, ought to respect and cherish them. A volume could not trace all their connections with private and public happiness. Let it simply be asked, where is the security for property, for reputation, for life, if the sense of moral and religious obligation deserts the oaths which are administered in courts of justice? Nor ought we to flatter ourselves that morality can be separated from religion. Concede as much as may be asked to the effect of refined education in minds of peculiar structure, can we believe, can we in prudence suppose, that national morality can be maintained in exclusion of religious principles? Does it not require the aid of a generally received and divinely authoritative religion?''[46]

[46] Works, vol. VIII, p. 205.

8. THE END OF THE STATE

By Rev. John A. Ryan, D.D.

In the foregoing chapters we have presented the Catholic teaching on the relations that should subsist between the State and the Church, on the derivation of political authority by the ruler, or rulers, on democracy and representative government, and on the moral process by which the ruler obtains his authority. We have also traced the historical development of the doctrine which underlines this process, with particular reference to our own political history. In the course of the discussion a good deal has been said concerning not only the end of the State, but also its functions. Nevertheless, these observations have been for the most part incidental to the main subjects under consideration. Neither the end nor the functions of the State have been dealt with adequately and systematically.

As we have already seen, the State, or civil society, is not a voluntary or optional association, such as, a trade union or a social club. It is a necessary society, a society which men are morally bound to establish and to maintain. This obligation arises from the fact that without a political organization and government, men cannot adequately develop their faculties, or live right and reasonable lives. God has so made human beings that the State is necessary for their welfare. "Man's natural instinct," says Pope Leo XIII, "moves him to live in civil society, for he cannot, if dwelling apart, provide himself with the necessary requirements of life, nor procure the means of developing his mental and moral faculties."[1]

This, then, is the general end or purpose of the State, the promotion of human welfare. "The Almighty, therefore,

[1] Encyclical, *The Christian Constitution of States,* page 2 of this volume.

has appointed the charge of the human race between two powers, the ecclesiastical and the civil, the one being set over divine and the other over human things."[2] Nor is the jurisdiction of the State over "human things" exclusive and complete. There is another association, another institution, for the promotion of temporal welfare which, in its own sphere, is superior to the State in authority, and prior to it in point of time. That is the family. In the primitive age of most peoples, the family provided for many of the needs and performed many of the functions that in later stages of development have come under the care of the State. Moreover, men have a natural right to form a great variety of voluntary associations for their common temporal advantage, as, in the fields of industry, fraternal insurance, and purely "social" activities. Therefore, the end of the State is to promote the common good only to the extent that this object cannot be attained by the family or by voluntary associations.

This, in a sense residuary, province always exists, and is always very extensive and very flexible. Concerning it there still exists a theory which is older than the Christian era, appearing among the Orientals, as well as in Greece and Rome. In brief, it regarded the State itself as the end of all individual effort. Hence, the State had for its province the whole field of human action, religious, moral, domestic, economic, and social. The State could legitimately intervene and interfere in every department of life; and to it every person and every interest was completely subject and completely subordinate. According to this theory the province of the State comprised not merely man's temporal interests, but every detail of his existence; and the welfare of the individual, or any particular group of individuals, was conceived to have no value except in so far as it served the interests and aggrandizement of the State. "The individual was always under the eye of the State; his conduct was regulated and his life determined for him with such minuteness that he was regarded as existing for the State rather than the State for him."[3] In the words of Lord Acton, the ancients "con-

[2] *Idem*, page 7 of this volume.
[3] *Introduction to Political Science*, p. 312, by James W. Garner.

centrated so many prerogatives in the State as to leave no footing from which a man could deny its jurisdiction or assign bounds to its activity. If I may employ an expressive anachronism, the vice of the classic State was that it was both Church and State in one. Morality was indistinguished from religion, and politics from morals; and in religion, morality, and politics, there was only one legislator and one authority. The State, while it did deplorably little for education, for practical science, for the indigent and helpless, or for the spiritual needs of man, nevertheless claimed the use of all his faculties and the determination of all his duties. Individuals and families, associations and dependencies, were so much material that the sovereign power consumed for its own purposes. What the slave was in the hands of his master, the citizen was in the hands of the community. The most sacred obligations vanished before the public advantage. The passengers existed for the sake of the ship."[4]

In this ancient theory, the reader will have perceived two distinct elements, apparently independent of each other. Nevertheless they are closely related. If the State is conceived as an end in itself, to which individuals and citizens are mere means, its province will necessarily be regarded as comprising the whole field of the individual's relations and actions. Since every one of these affects the prosperity of the State, they must all be under the absolute control of the State. Therefore, the theory of the State as a final end implies the theory of the State as embracing every end which the individual may conceivably seek. And there is a strong tendency for the rule to work both ways. If the end of the State be coextensive with man's whole life and interest, if it may regard as its proper and exclusive field, not merely the maintenance of peace, security, order, and justice, but all the details of man's welfare in his religious, moral, domestic, economic, and purely "social" relationship, the State will sooner or later come to regard its own prosperity and aggrandizement as the final end of all its policies and actions. The narrow sphere assigned to individual initiative and individual liberty, and the immense concentration of power in the hands of political functionaries, will be mutually helpful forces impelling men to look

[4] *History of Freedom and Other Essays,* pp. 16, 17.

upon the prosperity of the State as superseding and absorbing the welfare of human beings.

The theory of State omnipotence and omnicompetence has been revived in modern times. One of its most notable later forms is that expounded by the German philosopher, F. W. Hegel.[5] In his view, the State is the highest expression, manifestation, evolution of the Universal Reason, or World Spirit. Since perfection of life consists in the continuous expansion of the Universal Reason, and since the Universal Reason obtains its highest development in the State, all persons and institutions should serve and magnify the State. The individual exists for the State, and bears the same relation to the State as the branch does to the tree. Hence the State is the final and supreme end of human action, is an end in itself.

The number of political writers who have fully adopted the Hegelian theory of the State is negligible. Its philosophical basis is a pantheistic view of the universe which has not found wide acceptance. Nevertheless the central idea, that the individual exists for the State, and not the State for the individual, has been approved in some degree by a large number of political writers and by not a few political rulers. While Professor James W. Garner declares that "modern political thought and practice reject the view that the State is an end rather than a means,"[6] the Rev. Theodore Meyer, S.J., asserts that this view is held "not merely by one or two but probably by a majority of the teachers of public law."[7] According to Meyer, the prevailing form of the theory is this: The end of the State is the indefinite furtherance of human culture or civilization. While this end may, indeed, be identified with individual welfare, it is formulated by the advocates of the theory in such general and abstract terms that little consideration is given to the individual's concrete interests. The latter are always remote, always lost in some future condition of humanity at large. Existing individuals become secondary and subordinate to the

[5] *Philosophie des Rechts;* English translation by S. W. Dyde, *Hegel's Philosophy of Right.*

[6] *Introduction to Political Science,* p. 312.

[7] *Institutiones Juris Naturalis,* II, 276, note.

general interests of the future. Since the evolution of humanity and the indefinite progress of civilization necessarily tend to be identified with the welfare of the State, the latter comes to be regarded as the supreme end.

A theory of State purpose which can easily be, and sometimes has been, perverted into the doctrine that the State is an end in itself, is that which holds that its primary object is the development of national power ("der nationale Machtzweck"). If national power be confined within the limits fixed by natural law and human welfare, and if it be conceived as an intermediate and instrumental end,—as a means to the welfare of the people —it is unobjectionable. Occasionally, however, it has been accepted, especially in practice by political rulers, as not only the primary but also the ultimate end of State activity. Wherever this acceptation and policy prevail, the individual is unduly subordinate to the State. The glorification of the State as a detached entity is sought to the detriment of its citizens.

A more general and fundamental influence in favor of the doctrine that the State is an end in itself, is produced by the almost universal rejection of the doctrine of natural rights. If the individual has no rights that are independent of the State, then the State is the supreme determinant of rights. Theoretically, indeed, men may hold that the end of the State is the welfare of individuals, and that in the promotion of this end, the State may disregard the natural rights of particular individuals, or particular groups of individuals. This course may be represented as promoting the welfare of the great majority of individuals, rather than the interest of the State as an abstraction. Nevertheless, the disregard of natural rights in the case of any group of individuals and the assumption that the State is the source of all individual rights, necessarily tend to diminish the importance of the individual as such, and to exaggerate the importance of the State. Therefore, this view gives strength to the theory that at any given time, and in relation to its existing subjects or citizens, the State is an end in itself.

Another source of the doctrine that the State rather than the individual is the supreme end of human action, is found in

the modern theory of sovereignty. This is the theory associated with the name of the English jurist, John Austin.[8] It maintains that political sovereignty is legally unlimited. Two postulates are implied in this theory: First, the State recognizes no other society as its superior or as its equal; second, the State has the physical power to coerce all individuals and societies into obedience to its mandates. The first of these contradicts the Catholic doctrine that, in its own sphere, the Church is an independent, perfect and supreme social organization, and that, in society as a whole it is co-ordinate with, not subordinate to, the State. This is a question of moral right, of the requirements of reason; it is not a question of physical power. Whether the State does or does not recognize this moral right and rational authority of the Church in the field of the spirit, whether the State does or does not hinder by force the Church's exercise of this right,—the right itself exists and endures. The second postulate of the Austinian theory involves a question of positive fact. Is the State always sufficiently strong to coerce at will the actions of all individuals and associations within its territory? History supplies a rather large list of examples in the negative. However, it is correct to say that the State usually has sufficient physical power to overcome any opposing force within its borders.

The conception of sovereignty, the supreme politico-physical power of the State, as *legally* unlimited easily passes into the assumption that it is unlimited *morally*. If sovereignty were defined as the supreme legal, political and physical power of the State to do everything that the State has a moral right to do, this assumption could never be drawn from the definition. When the moral qualification is omitted from the definition it readily comes to be ignored in thought and practice. Legal omnipotence insensibly passes into complete and unqualified omnipotence. Defenders of the Austinian doctrine may protest that the latter conception "is characteristic only of some exponents of the doctrine," that the doctrine "in no way necessarily denies that the State ought to obey the moral law," yet their emphasis upon the absolute character of sovereignty, and

[8] *Lectures on Jurisprudence*, 1832.

their failure to make explicit reference to its moral limitations, promotes the assumption, conscious or unconscious, that no such limitations exist.[9] After all, the definition of sovereignty merely in terms of physical and legal power has little or no practical value, imparts little or no practical information; for the idea of the State necessarily and immediately implies this measure of power over its territory and people. What is required, is a statement of the *reasonable* power possessed by the State. And the average man naturally assumes that any formal authoritative definition is intended to be of this character, is designed to tell him not only what the State has the physical power to do, but what it may do in harmony with the moral law and the principles of reason.

The influence of the current theory of sovereignty in promoting the view that the State is not bound by the moral law, is reinforced by two particular assumptions. The first is the assumption which denies that individuals or social groups "are possessed of any natural rights which in effect limit the power of the State."[10] If the State may properly disregard natural rights, treat them as non-existent, it may logically take the same attitude toward all other elements of the moral law. Indeed, the great majority of conflicts between the State and the moral law have to do precisely with the question of natural rights. The second assumption which lends support to the doctrine of State independence of the moral law, is that in case of conflict the State itself is the only authority competent to decide whether or not its proposed action constitutes a violation of morality. In the view of Burgess, "the State is the best interpreter of the laws of God and of reason, and is the human organ least likely to do wrong; hence one must hold to the principle that the State can do no wrong."[11]

[9] Cf. "The Pluralistic State," in the "American Political Science Review," vol. 14, p. 398, sq.

[10] *Ibid.*, p. 404.

[11] *Political Science and Constitutional Law*, I, pp. 54-57. This view receives at least partial approval from Ernest Barker, in a footnote to H. G. Wells' *Outline of History*, II, 197: "I think better of Machiavelli than you do, and especially on two points. (1) He raises a real issue—whether, when a crisis besets the State, the ruler is not bound to abandon the rules of private morality, if by so doing he can preserve the State. If

To the extent that men regard the State as the supreme moral authority, as above the moral law which governs the actions of individuals and private societies, to that extent they must logically regard its judgments, its actions and its welfare as the supreme consideration. They come to look upon the State as an end in itself.

At first sight, it would seem ridiculously incorrect to enumerate among those who hold the State to be an end in itself the advocates of Socialism. For they profess to desire above all else the welfare of the masses; they insist that the Socialist State and administration is to be supremely democratic; and many of the older Socialists went so far as to predict that upon the establishment of the Socialist organization the State would die out as "a government of persons" and become supplanted by "an administration of things." Nevertheless, their program of State ownership and management of all the industries that produce for a national or an international market, involves both State omnipotence and State omnicompetence. A State that controlled both the political and the industrial life of the people, would completely subordinate the individual to a centralized bureaucracy. This would be under the more or less immediate direction of a majority, and not infrequently of a powerfully organized minority, of the citizens. Consequently, the welfare of the majority, or of the dominant minority, rather than the welfare of the individual as such, or the welfare of all individuals, would come to be regarded as the supreme consideration. It would also come to be conceived as simply the welfare of the State. From this stage it is only a step to the position of regarding the State as an end in itself. At least, this would be the tendency if, as most Socialists expect and assume, the constitution of the commonwealth contained no guarantees of indi-

he abandons those rules, he does *wrong* and Machiavelli admits that—but, at the same time, as the agent and organ of the State, he does *right* by preserving it, so far, at any rate as it is right that it should be preserved. This is a real issue which one cannot simply dismiss. . ." The same action of the ruler is at once right and wrong! Or, if its wrongness from the viewpoint of private morality becomes cancelled by the fact of its benefit to the State, then the State must be regarded as an end in itself and the supreme determinant of right and wrong!

vidual rights against the autocratic and oppressive action of the State.

In brief, the acceptance of the theory of the State as a final end would be a practical consequence rather than a formal postulate, an implicit rather than an explicit element, in the Socialist system. Given the invincible combination of political and industrial power, given the absence of a bill of rights for the individual, the inevitable result would be the absorption of the individual into the State and the conscious or unconscious general acquiescence in the theory that the welfare of the State is the supreme end of the social and political endeavors and policies. Indeed, the great majority of persons who to-day exaggerate the dignity and the rights of the State are led to this position, not by a metaphysical theory of its nature and end, but through a denial or a disregard of the natural rights of the individual.

Whatsoever may be its sources, and however widely it may be held, the theory of State omnipotence and omnicompetence, is fundamentally false. The State is not, as Hegel thought, the highest expression of the World-Spirit; it is merely an organization of human beings. The main purpose of the State is not to promote the general evolution of humanity, culture or civilization: This aim is secondary and surbordinate. While the State is under reasonable obligation to give some attention to the generations yet unborn, the welfare of the men and women now living is paramount. Individuals are not mere means or instruments to the glorification of the State, but are persons having intrinsic worth and sacredness. They are endowed with rights which may not be violated for the sake of the State. Considered apart from the individuals composing it, the State is a mere abstraction. Considered as a majority or as a select minority of its component individuals, the State has no right, nor any reason, to disregard the claims of any section of its members, since all are of equal worth and importance. National power is a means to State efficiency, not the end for which the State exists. As regards the sovereignty of the State, it is strictly limited by the moral law, and its true end is in harmony with the moral law. Finally, any organization of the State which

involves the practical disregard of individual rights and individual freedom, is quite as unreasonable as a system which formally assumes the State to be an end in itself.

To all these theories which either frankly make the State an end in itself, or tend to do so by exaggerating its authority and scope, we oppose the Catholic doctrine as expressed by Pope Leo XIII, toward the close of his encyclical "On the Condition of Labor": "Civil society exists for the common good, and hence is concerned with the interests of all in general, albeit with individual interests in their due place and degree." In this statement are two significant declarations: First, that the end of the State is not itself, either as an abstraction, or as a metaphysical entity, or as a political organization, but the welfare of the people; second, that the welfare of the people, "the common good," is not to be conceived in such a collective, or general, or organic way as to ignore the welfare of concrete human beings, individually considered. A brief analysis of the phrase, "common good," as interpreted by Catholic authorities, will enable us to see specifically and precisely what is the true end of the State.

Taking, then, the two words, "common good," as the most concise expression of the purpose for which the State exists and functions, let us ask ourselves, first, what are the beneficial objects denoted by the term "good"? They are all the great classes of temporal goods; that is, all the things that man needs for existence and development in this life. They comprise all these orders of goods, spiritual, intellectual, moral, physical and economic. More briefly, they are all the external goods of soul and body. Hence it is the right and duty of the State to protect and further the religious interests of the citizens, as we have already seen in the first two chapters of this volume; to promote within due limits their education; to protect their morals against external dangers, and to facilitate moral education; to safeguard the liberty and the bodily intergrity of the citizens from undue restraint, malicious attack, and preventable accident; and to protect private property and provide the citizens with a reasonable opportunity of obtaining a livelihood and advancing their material welfare.

That all these objects are conducive to human welfare, is self-evident; that none of them can be adequately attained without the assistance of the State, is fully demonstrated by experience; that they all come within the proper scope and end of the State is the obvious conclusion.

Now these objects, spiritual, intellectual, moral, physical, and economic, are the end of the State, not under every aspect but only in so far as they are or can be made "common." While the State exists for the individual, rather than the individual for the State, it is not the business of the State to take cognizance of every individual, as such, and to provide him directly with all these goods, after the manner of the provision made by a good father for his helpless children. Were the State to attempt this it would injure instead of promoting the welfare of the vast majority of individuals. This is the verdict of experience. All that the State can do, therefore, is to *make these goods available.* It can bring them within reach of the individual only through general acts which aim to produce a *common* effect. It can provide common *opportunities;* the individual must take advantage of the opportunities and make them fruitful for his peculiar needs. As a rule, therefore, the State promotes the common good by general laws and institutions, not by particular benefits.

On the other hand, the common, or general, or public good must not receive a rigid or an exclusive interpretation. The end of the State must, indeed, be conceived as common and universal, in the sense that no class nor any individual is to be positively excluded; but not every act of the State need affect all citizens in the same way, nor be directly beneficial to the whole community. As a matter of fact, few if any laws or other civil acts have precisely the same effect upon all individuals. Conspicuous examples of this fact are tariff laws, tax laws, industrial legislation of all sorts, and, indeed, substantially all the enactments of any legislative body. Even such elementary public institutions as the police force, the fire department and the public school affect different classes of citizens differently and unequally. In the second place, acts of the State need not always benefit the community as a whole. While the State is obliged to pursue the common good of all, it is not required to

make *every one* of its acts serve that end immediately and directly. While it must confer general rather than particular benefits, it often fulfills this obligation through enactments whose immediate effect is to promote the welfare of only a single class. Indeed, it is required to do this very thing if it is to attain its final end. For its final end is the welfare of all its individual members. Since its competent individuals are grouped in different classes, economic and other, they necessarily have different interests. Unless these varying interests are recognized and adequately cared for by appropriate State action, some of the classes of the community will not be justly treated by the State. In respect to these, the State will have failed to promote the good of all.

The specious objection to class legislation is based entirely upon *apriori* assumptions. It derives no support from the facts of contemporary society. Its roots are to be found in the individualistic theories that pervaded political thought when the government of the United States was established. The political thinkers of that day assumed that all men were so nearly equal in capacities and opportunities that all would benefit equally by the few laws that were required to promote the common welfare. While even then the population of the country was divided into at least two important economic classes, the agrarian and the commercial, and while these interests clashed more than once in the legislation of the time and even in the making of the Constitution, the diversity of class interests was neither so pervasive nor so sharp as it has since become; and the leaders of political thought believed that class differences and disadvantages would tend to diminish rather than increase. Thus began a misleading tradition which has in all the succeeding years stood in the way of the correct doctrine concerning the end of the State, and prevented the enactment of necessary and humane social legislation.

If the State is to promote the common good in an equitable and adequate degree, it must consider both the good of the whole and the good of the various classes. The common interests of all the citizens can be cared for through uniform and general legislation; for example, laws for the protection of religion and

morals. The varying interests of the different classes must be provided for by enactments which differ according to the different needs and deserts; for example, laws concerning industrial combinations, co-operative associations and labor organizations. To avoid all class legislation will mean discrimination in favor of certain classes, namely, those that are exceptionally powerful. These will be left free to exploit the weaker classes. Hence, in the sentence quoted above from Pope Leo XIII, the State is said to be concerned "with the individual interests in their due place and degree." Earlier in the encyclical the great Pontiff expresses the correct principle with more amplitude and precision. "Whenever the general interest, *or any particular class,* suffers or is threatened with injury which can in no other way be met or prevented, it is necessary for the State to intervene." The principle laid down in the italicized section of this sentence is still more specifically and emphatically stated in other passages of the same encyclical. For example: "The richer class have many ways of shielding themselves, and stand less in need of help from the State; whereas those who are badly off have no resources of their own to fall back upon, and must chiefly depend upon the assistance of the State."[12]

The *common* good means not only the good of all in general, or as a whole, but the good of every class and, so far as practicable, the good of every individual. To put the matter in summary terms, the State is under obligation to promote the welfare of its citizens, as a whole, as members of families, and as members of social classes.[13]

How far the State should go in the pursuit of these objects; whether it should directly provide the various kinds of goods required by the various classes, or merely create and guarantee the opportunity of acquiring them; by what principles and rules the State should be prevented from encroaching upon the proper sphere of the individual, the Church and private associations,—are questions which concern the State's *functions.* They will be discussed in the next chapter.

[12] The whole section of the encyclical on the part of the State in the reform of industrial conditions is fundamental.

[13] Cf. Costa-Rosetti, *Synopsis Philosophiae Moralis,* pp. 479-495.

9. ERRONEOUS THEORIES CONCERNING THE FUNCTIONS OF THE STATE

By Rev. John A. Ryan, D.D.

The ultimate end of the State in the temporal order is the public good, or public welfare. The proximate end comprises all those lawful means that contribute to the attainment of the ultimate end. They consist of political actions and institutions, proceeding from the three great departments of government; namely, the legislative, executive, and judiciary. It is these means that we have in mind when we speak of the functions of the State.

Concerning these functions political writers have advocated three different theories. Of these the first two are extreme and mutually opposed; the third occupies a middle ground. Not without some inaccuracy, the first two are commonly known, respectively, as individualistic and socialistic. The third theory has no fixed designation, although it is sometimes called the "general welfare theory."

THE INDIVIDUALISTIC THEORY

Inasmuch as the State operates through the political organization called the government, discussion of the State's functions is necessarily discussion of the functions of government. Hence the task before us is to describe, in outline, the kinds of activities which the government may properly perform in order to attain the end of the State; that is, "to promote the welfare of the people as a whole, as members of families, and as members of social classes." This task can be most satisfactorily undertaken by considering successively the three theories noted above.

The individualistic theory may be defined in general terms

as that which would reduce government functions to a minimum. It frequently finds expression in the assertion, "the best government is that which governs least." It conceives government entirely, or almost entirely, in terms of restraint. Governmental acts are thought of as restrictions upon individual liberty. Government and its operations come to be regarded as little better than necessary evils. Between this theory and anarchism the difference is one of degree rather than of kind. While the various defenders of the theory differ somewhat in their conceptions of the proper limitations of governmental action, the great majority hold that it should merely preserve order, enforce contracts, and punish crime. Hence their doctrine has been called in derision "the policeman theory of the State." A more general name is the *laissez-faire* theory, which denotes in particular its attitude toward government supervision of industry.

The roots of the individualistic theory are partly political and economic, partly philosophical, and partly industrial. Politically it was a reaction against the excessive and harmful restrictions of individual liberty by the governments of Europe. The civil freedom of the masses was throttled in the interest of the privileged classes. Commerce and industry were hampered by a multitude of restrictions that had long outlived whatever usefulness they once possessed. The latter half of the eighteenth century witnessed a formidable reaction against these restrictions. In France it found expression in the writings of the Physiocrats and in the principles of the Revolution; in Great Britain it was championed by Adam Smith and other economists with such extraordinary success that it was translated unmodified into acts of Parliament.[1] "All systems either of preference or restraint being thus completely taken away," said Smith, "the simple and obvious system of natural liberty establishes itself of its own accord."[2] In the United States of America, the political philosophy of the day, the revolt against the petty restrictions imposed by the British government, and the natural

[1] Cf. Ingram, *History of Political Economy*, pp. 89-93; Toynbee, *Industrial Revolution*, 11-26; Hammond, *The Town Laborer*, chs. VII and X.

[2] *The Wealth of Nations*, Book IV, ch. IX.

individualism of a pioneer people inhabiting a land of exceptional opportunities,—combined to make our government from the beginning a more thorough exponent of the individualistic theory than those of England and France.

In the realm of philosophy, the two most influential promoters of the theory are probably Immanuel Kant and Herbert Spencer. The Kantian principle of individual rights and liberty is this: "Act externally in such a manner that the free exercise of thy will may be able to coexist with the freedom of all others, according to a universal law."[3] According to the advocates of this principle, the proper and only function of the State is to protect men in the enjoyment of their equal spheres of liberty, specifically, to safeguard men's rights of person and property against violence and fraud. As we shall see presently, the principle does not logically warrant even this measure of State activity.

The principle of individual rights and liberty laid down by Kant is substantially the same as that formulated by Herbert Spencer: "Every man has freedom to do all that he wills, provided he infringes not the equal freedom of any other man."[4] However, Spencer arrived at this formula without being aware of the similar maxim which Kant had enunciated many years before.[5] The inference regarding State functions which Spencer draws from his principle of individual rights and liberty is substantially the same as that deduced by Kant. "The greatest prosperity and multiplication of efficient individuals will occur where each is so constituted that he can fulfill the requirements of his own nature without interfering with the fulfilment of such requirements by others."[6] Hence the sole duty of the State is "to insist that these conditions shall be conformed to"; in brief, the State should not go beyond the task of "maintaining justice." By induction as well as by deduction, Spencer arrives at the conclusion that "the primary function of government is that of combining the actions of the incorporated indi-

[3] *Einleitung in die Rechtslehre*, pp. 31, 68; Cf. Meyer, *Institutiones Juris Naturalis*, I, 525; II, 305.

[4] *Principles of Ethics*, II, 46.

[5] *Idem*, appendix A.

[6] *Idem*, p. 221.

viduals for war, while its secondary function is that of defending its component members against one another.''[7]

Both Kant and Spencer conceived the functions of the State in terms of coercion. Government has no other duty than that of protecting rights and repressing injustice. It should not go outside this province to promote the welfare of individuals or classes by positive measures of State assistance, whether in the field of religion, morals, education or industry. While very few political writers and no governments any longer consciously subscribe to the theories of these two writers, a large section of the people, educated and uneducated, is still considerably influenced by them on account of the place which they have obtained in political, philosophical, and general literature. Kant, especially, gave a strong impetus to the political and economic liberalism which was formerly very powerful, and which is still dear to the hearts of the bourgeois.

The industrial contribution to the individualistic theory is to be found in the interests and influence of the capitalist classes. Reference has been made above to the part played by the economists in popularizing the doctrine and promoting its enactment into law in the first quarter of the nineteenth century. More powerful even than the economists was the new capitalist class which arose during the Industrial Revolution. So influential were the capitalists in shaping legislative policies at this period that the Combination Acts, passed at their dictation, ''remain the most unqualified surrender of the State to the discretion of a class in the history of England.''[8] ''Let alone'' by the government, the capitalists were enabled, through ''free'' contracts with the laboring population, to employ children under the age of ten in factories, to require women and children, as well as men, to toil for 12, 14, and even 16 hours per day, to injure the bodies and the health of the employees through unsafe and unsanitary work places, to pay starvation wages, and in general to exploit the workers to the utmost limit of human endurance. Since they were greatly and notoriously superior to the workers in bargaining power, they were obviously in-

[7] *Idem*, p. 207.
[8] Hammond, *op. cit.*, p. 113.

terested in having the labor contract unregulated by legal statutes. This attitude has been taken by the employing classes of every industrial nation. As regards government regulation of industry in the interest either of the laborer or the consumer, they have been in great majority champions of the individualistic theory.

So much space has been given to the origins of the individualistic theory because the interest in it is now mainly historical. In the form advocated by Kant and Spencer, it has never been adopted by a modern State. Not even in the first quarter of nineteenth century England, nor in the first half of nineteenth century America, did the State confine its activities to the protection of life and property and the enforcement of contracts. There was always some regulation of industrial affairs in the interest of some class, some government operation of public utilities, *e. g.*, the post office, some public provision for education, and some State protection of public health and morals. With the exception of about half a century of reaction brought about by the political, economic, philosophical, and industrial factors above described, the policy of all nations has been out of harmony with the individualistic theory, and if the signs of our own time can be trusted this theory will command less respect twenty years from now than it commands to-day.

From the side of reason and experience the arguments against the individualistic theory are overwhelming. They are drawn in part from the nature of man, and in part from the defects of the individualistic assumptions.

The most extreme of these assumptions is that government is merely a necessary evil. Government is conceived entirely, or almost entirely, as a check upon individual liberty, and therefore as regrettable if not abnormal. Now the truth is that the State and government are as natural as human association. Men cannot live in isolation; in society they cannot live reasonable lives nor pursue self-development without the State. This is a fundamental, normal fact of human nature, as evinced by universal experience. It is a fact that the Catholic Church has always recognized and proclaimed. She teaches that the State is a necessary, not a voluntary, society, and that it is as natural

to man as the family or as organized religion. The exponents of the individualistic theory proceed from a false viewpoint and a false assumption concerning the nature and needs of man in relation to the State. Were they to estimate the facts of life without these prejudices, they would realize that the State is a necessary means to right living and human progress.

Their conception of governmental activity as almost entirely restrictive and coercive is false and misleading. In the first place, modern governments perform very many functions which are not restrictive, even in form. Such are the maintenance of schools, a health service, a life saving service, fire departments, roads, parks, etc., and the operation of a great number of scientific bureaus and other centers of information and advice. None of these is a direct restraint upon the freedom of the individual. Some of them indirectly diminish the economic and professional opportunities of some persons, inasmuch as they occupy, in whole or in part, fields that would otherwise be occupied exclusively by individual citizens. To be sure, the individualist may assert that these are not legitimate functions of the State, but that contention is based upon an *apriori* theory rather than upon any direct interference with individual liberty. The *apriori* theory will be considered presently.

In the second place, a great deal of restrictive or prohibitive legislation is negative only in form. In effect it is positive, inasmuch as it increases the actual liberty and opportunity of all those persons who could not or would not exercise the liberty which the law forbids, and who would be injured through the exercise of such liberty by others. For instance, child labor legislation increases the opportunities and welfare of children; anti-monopoly laws are calculated to increase the opportunity and welfare of the majority of the population. When men denounce industrial regulations of this sort as restraints upon individual freedom, what they really demand is that one class of persons should be left free to oppress another, usually a larger, class of persons. In all such situations the real conflict of desires and interests is not between the government and the whole body of citizens, but between two classes of citizens. Hence the reasonableness of government interference with in-

dividual liberty cannot be determined by the bare, technical fact of restraint. It is to be sought in the effects which the law produces upon the rights and welfare of the various classes that make up the community.

In the third place, restrictive and prohibitive legislation rarely diminishes the actual liberty of more than a minority, generally a small minority, of the community. The law forbidding theft applies in form to all the citizens, but it actually affects only a small minority; for the great majority have no desire to steal. The liquor prohibition law curtails the desired liberty of as large a proportion of the population as any other restrictive statute, since a very numerous section of the community wants to consume intoxicating drink; nevertheless, a very large number, if not the majority, attaches no importance to this freedom. The latter are not practically affected by the prohibition law. Their liberty is only hypothetically, not actually, diminished. The law forbids them to do something which is outside of their desires. The repeal of the law would give them a kind of liberty that they do not regard as of any value. When we turn to the industrial field, we find a very striking difference between the hypothetical and the actual diminution of liberty. Laws which prohibit the exploitation of child labor by employers, and the imposition of extortionate prices upon consumers by a monopoly, restrict the potential or theoretical liberty of all persons, since they carry no exemption for any class. Nevertheless, the persons whose freedom is actually lessened, constitute a very small section of the population. The overwhelming majority could not or would not do the things which the law forbids. In their case the law is no restraint upon actual liberty.

In the fourth place, the curtailment of liberty is not necessarily nor always an evil thing. It is not even a lesser evil. Not infrequently it is a positive good. Individual liberty is a means, not an end. When it is directed to evil purposes, to objects inconsistent with the true welfare of its possessor, it is a bad thing for him. When it inflicts injury upon the neighbor, it is likewise irrational. And these perversions of liberty are sufficiently frequent to require constant restraint by an adequate social agency. Such an agency is the government. While nega-

tive in form,—"thou shalt not"—its regulations are ultimately positive and constructive. It assures to men a larger measure of opportunity for right life than would be possible in its absence. The limitation of liberty is quite as normal as the exercise of liberty. Hence due limitations imposed by the State are in no sense an evil, nor even abnormal. It must be acknowledged that the restrictions of individual liberty by many European governments in the seventeenth and eighteenth centuries were tyrannical and destructive of human welfare; but this fact does not warrant the inference that restriction itself is only a species of necessary evil.

So much for the assumptions and prejudices underlying the individualistic theory. Let us now consider its supreme political formula; namely, that government should merely prevent and punish violence and fraud and enforce contracts, or that its sole function is the protection of rights. In passing, it may be noted that the exponents of the theory are not willing to have their formula applied in its full extension. For example, the claim of the laborer to a living wage is in the present industrial system one of man's natural rights. Yet the individualist would deny that the enforcement of this right by means of minimum wage law is a proper function of government. In any case, the formula itself has no basis in reason or in experience. If the end of the State is to promote the common good, why should its benefits be restricted to one class of goods? Men need protection against injustice, indeed, but they have also a great variety of other needs. Religion, morals, education, and health, are at least as vital to human welfare as physical integrity and private property. And the inability of the individual to safeguard his welfare in respect to the former goods is frequently as obvious as in the case of his corporal and property rights. Nevertheless, the individualist would not permit the government to make adequate provision for man's welfare as regards religion, morality, education or health. Such legislation he would condemn as outside the legitimate province of the State. Surely this position is artificial and illogical.

The individualistic principle of equal freedom is likewise artificial. Moreover, it is impossible. It holds that the individ-

ual should be free to do anything that he wishes, provided that he does not interfere with the equal freedom of others. But this principle is gratuitous and palpably false. Translated into governmental policy, it would permit adultery, fornication, the teaching and propagation of obscenity, deception, usury and all other forms of extortion. It would provide a paradise for every species of economic oppressor. The man who desired to commit any of these crimes could logically claim immunity from governmental interference on the ground that he conceded the same liberty to everyone else. This principle would be of great advantage to men who were exceptionally vicious, exceptionally cunning, and exceptionally selfish. It would put at a disadvantage all those who did not wish to exercise this kind of individual "liberty."

Nor is this all. At first sight, the principle of equal individual liberty seems to authorize, or at least to permit, governmental repression of such crimes as theft, assualt, and homicide. In reality it does nothing of the kind. For it is not based upon nor determined by *objective* considerations, such as the safety of society or the maximum amount of human welfare. Both Kant and Spencer express the principle in subjective terms. The will of the individual is to determine the limits and the application of the principle. "So act," says Kant, "that the free use of thy liberty can coexist with the liberty of everyone else according to a universal law." In Spencer's formulation, "every man is free to do that which he wills, provided he infringes not the equal freedom of any other man." Therefore, each individual is the authoritative interpreter of the principle in his own regard. The man who steals does not violate the principle, so long as he does not ask the State to deny the same liberty to his fellows. The murderer is likewise safe from interference if he will concede to other men the right of universal homicide. As pointed out above, this principle should be peculiarly gratifying to the exceptionally vicious and exceptionally cunning; also to those possessed of exceptional physical strength. Many if not all such persons would welcome a regime of unrestrained competition in fraud and violence. With immunity from legal restraint, they would be willing to take all

the risks of competing in criminality with their less "efficient" fellows.

Admirers of Kant may question this interpretation of his principle. They may claim that the phrase, "according to a universal law," is an objective limitation upon the subjective and arbitrary interpretation and exercise of individual liberty. The claim cannot be allowed. The "universal law" which Kant had in mind was not the moral law, nor the civil law, nor the divine law. It was simply the universal law of liberty. It could be violated only by the man who refused to grant to others the liberty that he claimed for himself. Such a man would be acting according to a *particular,* or exceptional, law of liberty. But the man who was willing to concede the same liberty to others could indulge in wholesale acts of injustice without violating the Kantian principle. Nor is it relevant to object that such conduct if universalized would destroy human society; for the Kantian principle does not recognize any objective standard or consequence as the determinant of individual freedom. Each individual is authorized to apply the principle according to his own desires and conceptions, unhindered by any consideration of social consequences.

THE SOCIALIST THEORY[9]

According to the program of International Socialism, the State would assume several new and very important functions. These are mainly economic, but they also include a large extension of State control over the family and education.

The Socialist theory holds that the State should own and operate substantially all the means of production; that is, all land used for commercial and industrial purposes, all mines, all but the smallest farms, and all except the very small industrial establishments and instruments of production and distribution. The great majority of individuals engaged in agricultural, industrial, and commercial pursuits would be employees of the State. The only kinds of business, whether in town or

[9] Cf. Hillquit-Ryan, *Socialism: Promise or Menace?* Skelton, *Socialism, A Critical Analysis.* Cathrein-Gettelmann, *Socialism.*

country, owned and carried on by individuals would be such very small concerns as could be managed by one person, or at most, by one person with the assistance of one or two employees.

From both the individual and the social viewpoint this would be an undesirable extension of State functions. The individual would be dependent upon the State throughout his whole life, not merely for protection and economic opportunity, but for his occupation and his livelihood. His only source of income would be his salary, and for that he would be dependent entirely upon the State. He could not choose between that condition and the management of a business of his own. At least, such would be the lot of the vast majority. On the other hand, everything that entered into the individual's consumption would have to be bought from the State. At present the purchaser of goods can make a choice among competing dealers. If he does not like a certain dealer or a certain kind of commodity, he can supply his wants elsewhere or otherwise. In a Socialist regime he would be compelled to select from the small number of standardized articles provided by the State. In a word, the State would be the only seller of goods as well as the only buyer of labor. Even if men obtained a better and more secure livelihood in a Socialist society than they now obtain, this advantage would not compensate them for the lack of freedom in their economic contracts, and the lack of that social power and that self-respect which are provided by private property.

The combination of political and industrial functions in the State would place the individual entirely at the mercy of bureaucrats and majorities. Human beings could not be trusted to exercise justly this tremendous power. While the people would, indeed, have the legal right and power to remove any set of officials at the elections, we must remember that "the people" is never a simple entity, having only one set of interests and acting unanimously. In political affairs, "the people" that determines policies is never more than a part of the whole population. It is at most a majority; sometimes it is only a well organized minority. A national administration that possessed the economic and political power conferred by Socialism would be much more difficult to dislodge than one possessing merely

the authority conceded by our present political system. Under Socialism a government could be maintained in office indefinitely, through a combination of the workers in the principal industries, and would be able to subject the rest of the population to unlimited economic oppression.

The common good would be enormously impeded by the attempt of the State to own and manage the means of production. In the words of Pope Leo XIII, such an industrial organization would produce universal "misery and degradation." The main reason is that the State would be unable to command either the incentives or the discipline which are necessary for efficient production. Under Socialism both the directors and the directed would be remunerated entirely by salaries. There would be no elastic and indefinite gain held out before men as a stimulus to initiative, hard work and efficiency. In the present system substantially all business men and a large proportion of those who are compensated by salaries and wages, have some reason to hope that their rewards can be increased to an indefinite extent through their own efforts. In a Socialist system this hope would all but disappear. Even though increases in salaries and wages might be appointed for those who exhibited a certain degree of productivity, the arrangement would necessarily be operated in such a rigid and routine fashion, and recognition of merit would be so slow and halting, as to stifle incentive at its source. The promptness with which efficiency is now rewarded would be almost entirely wanting.

Not only adequate incentive but effective discipline would be impossible. The great majority of men are lazy. To a great extent they are kept working through the stimulus of fear. They are afraid of losing their jobs. In a Socialist regime the directors of industry would not have sufficient power to discharge lazy and incompetent workmen, since their own positions would be finally dependent upon the votes of those under their direction. The only alternative is a militaristic organization of industry which could not long survive in a democratic State.

The Socialist program includes a large extension of governmental control over the family and education. Indeed, the majority of Socialists regard the child as belonging primarily

to the State. They look with favor upon a loosening of the marriage bond, and the continuation of the marital union only so long as the two parties think they love each other. The disastrous effects upon the welfare and progress of the race which would follow State usurpation of most important parental functions, and State encouragement to a system of free love, are too obvious to require formal or detailed description. And State monopoly of education would be a most subtle and destructive assault upon individual liberty.

The distrust of the State which underlies the individualist theory would be entirely justified if political society had an inherent tendency toward the Socialist State. Happily there exists no such tendency. Indeed, it is only when the State is prevented from exercising and developing its normal functions that the danger of perversion into Socialism can become considerable. The true and rational conception of State functions avoids the vices and the extremes of Socialism no less than of individualism. This conception will form the subject of the next chapter.

10. THE PROPER FUNCTIONS OF THE STATE

By Rev. John A. Ryan, D.D.

The end of the State, we have seen, is to promote the welfare of its citizens, as a whole, as members of families, and as members of social classes. Anyone who is inclined to doubt the propriety of including the second and third of these clauses, will dismiss the inclination as soon as he looks beneath formulas and fixes his attention upon realities.

The State exists and functions for the sake of human beings. It attains this end primarily by safeguarding those interests that are *common* to all the persons under its jurisdiction; for example, by resisting foreign invasion and protecting life and property. If it stops at this point it will leave unprotected not only many individual interests, but many elements of the common good, many aspects of the general welfare. To neglect the integrity of the family or the prosperity of any considerable social class, will sooner or later injure society as a whole. To take care of these interests is, indirectly at least, to promote the common good. Nor is this all. Since individual welfare is the ultimate, though not strictly the formal, object of the State, that object ought to be deliberately promoted by the State, whenever it cannot be adequately furthered by any other agency.[1] To deny this proposition is to assume that men have been unable to achieve a political organization that is adequate

[1] Cf. Cronin, *The Science of Ethics*, II, 474: "The measure of State function, therefore, is to be found in the necessities of man and the inability of the individual and the family to provide these necessities. Anything, therefore, which is necessary, whether for the individual or for society at large, and which the individual or the family is not in a position to supply, may legitimately be regarded as included in the end of the State."

to safeguard their temporal welfare. However, it is neither desirable nor practicable for the State to provide for every individual as such. It can promote individual welfare best by dealing with men as groups, through their most important group relationships; therefore, as members of families, and as members of social classes. When it provides for the needs that are common to members of these two fundamental forms of association, it benefits most effectively the whole number of its component individuals.

What are the specific policies and measures by which the State can best attain the objects described in the foregoing paragraphs? To answer this question will be to describe the proper functions of the State.

Among political writers a fairly frequent classification of State functions is into necessary and optional, or essential and non-essential. The former are "such as all governments must perform in order to justify their existence. They include the maintenance of industrial peace, order, and safety, the protection of persons and property, and the preservation of external security. They are the original primary functions of the State, and all States, however rudimentary and undeveloped, attempt to perform them."[2] They may be enumerated somewhat more specifically as military, financial, and civil.[3] In the exercise of its military function, the State defends itself and its people by force against foreign aggression, and prevents and represses domestic disorder. The financial function of the State comprises the collection and expenditure of funds for the maintenance and operation of government. Regulations concerning individual rights, contracts, property, disputes, crime, and punishment, constitute the State's civil function.

The optional or unessential functions are calculated to increase the general welfare, but they could conceivably be performed in some fashion by private agencies. They comprise public works; public education; public charity; industrial regulations, and health and safety regulations.[4] Under the head of public

[2] Garner, *An Introduction to Political Science*, p. 318.
[3] Holt, *An Introduction to the Study of Government*, pp. 268-281.
[4] Holt, *op. cit.*, pp. 285-305.

works are comprised: Control of coinage and currency and the conduct of banks; the postal service, telegraphs, telephones, and railroads; the maintenance of lighthouses, harbors, rivers, and roads; the conservation of natural resources, such as forests and water power, and the ownership and operation of supply plants and municipal utilities. Public education may include not only a system of schools, but museums, libraries, art galleries, and scientific bureaus, such as those concerned with the weather and with agriculture. In the exercise of the function of public charity, the State establishes asylums, hospitals, almshouses, corrective institutions, provides insurance against accidents, sickness, old age and unemployment, and makes various provisions of material relief for persons in distress. In the field of regulation, as distinguished from that of ownership, operation, or maintenance, the States supervises public safety and industry. Regulations of the former kind relate to quarantine, vaccination, medical inspection of school children and of certain businesses and professions, and protection of public morals in the matter of pictures, publications, theatres and dance halls. Industrial regulation extends to banks, commerce, business combinations, and the relations between employer and employee.

The classification of State functions as necessary and optional has the merit of presenting a comprehensive view of political experience. It enables us to see how States have interpreted their scope, and distinguished between functions that are essential and functions that are non-essential. While all fully developed States have regarded as essential the functions which are so designated in the foregoing paragraphs, not all have agreed in conceiving the so-called optional functions as of that character. Some of the optional functions have been regarded by some States as primary and essential. And the number of optional functions that have been undertaken varies greatly among the various States. The factor determining the course of the States in this matter has been mainly, if not exclusively, expediency.

A somewhat analogous classification is used by many Catholic writers. While conforming fully with political experience, it is also based upon fundamental principles of ethics, and it illustrates the principles of logic. It is thus stated in summary form

by Cathrein.[5] The functions of the State are twofold: First, to safeguard the juridical order, that is, to protect all rights, of individuals, families, private associations, and the Church; second, to promote the general welfare by positive means, with respect to all those goods that contribute to that end. Substantially the same classification and principle is laid down by Meyer,[6] Castelein,[7] Cronin,[8] and Lilly.[9] In a general way the primary functions in this classification correspond to the necessary or essential functions in the grouping made by the political writers. While the second group of functions denoted by the Catholic writers resembles the second category of the political science manuals in a general way as regards content, there is a considerable difference of principle. The secondary functions described by the political writers are said to be optional, and their optional character is determined mainly by the varying experience and practice of particular States; but the positive promotion of general welfare is regarded by the Catholic writers as *normal* and *necessary,* because required by the fundamental needs of human beings. According to the Catholic writers, the difference between the primary and secondary functions of the State is not a difference of kind but only of degree. As noted by Meyer, the primary functions are not sufficient. The State must not only safeguard rights, but promote the general good by positive measures of helpfulness.[10] This is the general principle. In carrying it out, the State may properly undertake some particular activities which are not obligatory, but only more or less expedient.

PRIMARY FUNCTIONS

The concrete activities which fall under the primary functions of the State may be summarized as follows. All natural rights must receive adequate protection. The State is obliged to safe-

[5] *Philosophia Moralis,* No. 545.
[6] *Institutiones Juris Naturalis,* II, no. 317.
[7] *Philosophia Moralis et Socialis,* p. 446.
[8] *The Science of Ethics,* II, 472-479.
[9] *First Principles in Politics,* ch. IV.
[10] Loc. cit.

guard the individual's rights to life, liberty, property, livelihood, good name, and spiritual and moral security. Whence it follows that laws must be enacted and enforced against all forms of physical assault and arbitrary restraint; against theft, robbery, and every species of fraud and extortion; against all apparently free contracts which deny the opportunity of pursuing a livelihood on reasonable terms; against calumny and detraction; and against the spiritual and moral scandal produced by false and immoral preaching, teaching, and publication.

In the individualistic theory, the first two classes of enactments are held to exhaust the functions of the State, apparently on the assumption that they cover all the individual's rights. This is a grossly inadequate conception. Reasonable opportunities of livelihood, reputation, spiritual and moral security, are all among man's primary needs. Without them he cannot develop his personality to a reasonable degree, nor live an adequate life. Therefore, they fall within the scope of his natural rights. For natural rights include all those moral powers, opportunities and immunities which the individual requires in order to attain the end of his nature, to live a reasonable life. Any arbitrary or unreasonable interference with these is a violation of the rights of the individual. Hence the unfair competition carried on by a monopoly, unreasonable boycotts, wage contracts for less than the equivalent of a decent livelihood, untrue or otherwise unjustifiable statements derogatory to a man's reputation, utterances and publications calculated to corrupt his religion or morals,—are all injurious to the individual, and are unreasonable interferences with the security and development of his personality.

All the foregoing rights should be safeguarded by the State, not only as exercised by the individual, but also as involved in the reasonable scope of associations. Hence the family, the Church and all legitimate private societies have a just claim to protection by the State in the pursuit of all their proper ends. Men have a right to pursue their welfare not only by individual effort but through mutual association.

A corollary of State protection of rights is State determination of rights. To a very great extent the reciprocal limits of in-

dividual rights cannot be satisfactorily adjusted by the individuals themselves. This fact is most conspicuously illustrated in connection with property rights, but it receives frequent exemplification in other sections of the juridical province.

While all the rights above described have a general claim upon the State for protection, not all of them have an actual claim to adequate protection at any given time. This is a question of prudence and expediency. What the State may normally be expected to do, is one thing; what it is here and now able to do, is quite another thing; for example, with regard to false religious teaching and scandalous moral teaching. Perhaps the most comprehensive and practical principle that can be laid down is this: The State should not attempt to protect any right beyond the point at which further efforts threaten to do more harm than good.

SECONDARY FUNCTIONS

These can be conveniently described by following the order outlined in the paragraph which enumerated the so-called optional functions. In general, the secondary functions cover all activities that cannot be adequately carried on by private effort, whether individual or corporate.[11]

Public Works. Under this head are included all those industries and institutions which the State not merely regulates, but owns and manages. The control of coinage and currency are undoubtedly among the necessary functions of government. Almost equally necessary is the government postal service. Telegraphs, telephones, railways, water supply and lighting may in a sense be called optional functions, since the general welfare does not always require them to be operated by the State. When public operation is clearly superior to private operation, all things considered, the State undoubtedly neglects its duty of promoting the common welfare if it fails to manage these utilities. It is a necessary part of the State's functions to provide such public safeguards as fire departments, lighthouses, buoys, and beacons; to maintain such instrumentalities of communication as roads,

[11] Cf. Meyer, *op. cit.*, II, p. 289; Cronin, *op. cit.*, II, 474, 475.

canals, bridges, and wharves; and to conserve such natural resources as forests, water powers, and watersheds. None of these activities can be satisfactorily performed by private enterprise.

Public Education. As the child belongs primarily to the parents, so the function of education is primarily theirs. Both these propositions are demonstrated by the facts and requirements of human welfare. In very exceptional cases only can the education and upbringing of the child be controlled and carried on as well by the State as by the parents. Nevertheless, the common welfare does require the State to take a rather important part in the work of education. It is summarized in the following excerpts from the Pastoral Letter of the American Hierarchy, issued in 1920.

As the public welfare is largely dependent upon the intelligence of the citizen, the State has a vital concern in education. This is implied in the original purpose of our government which, as set forth in the preamble to the Constitution, is "to form a more perfect union, establish justice, ensure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity."

In accordance with these purposes, the State has a right to insist that its citizens shall be educated. It should encourage among the people such a love of learning that they will take the initiative and, without constraint, provide for the education of their children. Should they, through negligence or lack of means fail to do so, the State has the right to establish schools and take every other legitimate means to safeguard its vital interests against the dangers that result from ignorance. In particular, it has both the right and the duty to exclude the teaching of doctrines which aim at the subversion of law and order and therefore at the destruction of the State itself.

The State is competent to do these things because its essential function is to promote the general welfare. But on the same principle it is bound to respect and protect the rights of the citizen, and especially of the parent. So long as these rights are properly exercised, to encroach upon them is not to further the general welfare, but to put it in peril. If the function of government is to protect the liberty of the citizen, and if the aim of education is to prepare the individual for the rational use of his liberty, the State cannot rightfully or consistently make education a pretext for interfering with rights and liberties which the Creator, not the State, has conferred. Any advantage that might accrue even from a perfect system of State education would be more than offset by the wrong which the violation of parental rights would involve.

In our country, government thus far has wisely refrained from placing any other than absolutely necessary restrictions upon private initiative. The result is seen in the development of our resources, the products of inventive genius and the magnitude of our enterprises. But our most valuable resources are the minds of our children, and for their development at least the same scope should be allowed to individual effort as is secured to our undertakings in the material order.

The spirit of our people in general is adverse to State monopoly, and this for the obvious reason that such an absorption of control would mean the end of freedom and initiative. The same consequence is sure to follow when the State attempts to monopolize education; and the disaster will be greater inasmuch as it will affect, not simply the worldly interests of the citizen, but also his spiritual growth and salvation.

There are other public educational institutions which can scarcely be called absolutely necessary, and yet which are so useful that they may very properly be conducted by the State. Such are museums, art galleries, libraries, zoological gardens, scientific bureaus, laboratories, and experiment stations. The services rendered by these agencies contribute much to the common welfare and they could not, as a rule, be adequately carried on by private effort.

Public Charity. The principle that the State should do only those things which cannot be done as well by private action, applies with especial force to the field of charity. In general, this principle rests upon the fundamental truth that the individual reaches a higher degree of self-development when he does things for himself than when the State does things for him. In the province of charity this fact is illustrated with regard both to the receiver and the giver. The former is more likely to seek unnecessary assistance from the State than from an individual; the latter is more likely to infuse his charity with human sympathy than is the State; and his incentives to charitable action are diminished if the State does too much. In both cases harm is done to individual development.

Nevertheless, the charitable functions of the State are numerous and important. In the field of prevention, it can and should use all proper and possible methods to provide that kind of social environment which renders charitable relief unnecessary. Under this head comes a large list of industrial, educational,

sanitary and moral provisions, to assure people a reasonable minimum of the material conditions of living. Some of these are stated in detail in later paragraphs of this chapter. In the field of relief, the State is frequently required to maintain hospitals, asylums, almshouses and corrective institutions; to grant subsidies to private institutions and agencies engaged in these works; and even to provide for needy persons outside of institutions. Whether and to what extent the State should undertake any of these tasks, is always to be determined by the answer which the actual situation gives to the question: can the State do the work better, all things considered, than private agencies? "All things considered," refers to remote as well as immediate results. For example, it is conceivable that the State might take care of all dependent children more cheaply than could private associations, but this action ought not to be taken if it would lead to a notable decline in charitable feeling, responsibility, and initiative among individuals.

Public Health, Safety, Morals, and Religion. The State should protect its citizens against disease, by sanitary regulations, such as those relating to quarantine, inoculation, medical inspection of school children, impure drugs, adulterated food, and the disposal of garbage. It should safeguard their physical integrity, by such measures as traffic rules, safety requirements for public conveyances, and building regulations. It should, as far as possible, provide them with a good moral environment through the regulation or repression of the liquor traffic, through the suppression of divorce, prostitution, public gambling, and indecent pictures, printed matter, theatrical productions, and places of amusement. Finally, the State is under obligation to protect and promote religion in all ways that are lawful and effective. Here we may appropriately quote the words of Pope Benedict XV:

> Let princes and rulers of the people bear this in mind and bethink themselves whether it be wise and salutary, either for public authority or for the nations themselves, to set aside the holy religion of Jesus Christ, in which that very authority may find such powerful support and defense. Let them seriously consider whether it be the part of political wisdom to exclude from the ordinance of the State and from public instruction, the teaching of the Gospel and of the Church. Only

too well does experience show that when religion is banished, human authority totters to its fall. That which happened to the first of our race when he failed in his duty to God, usually happens to nations as well. Scarcely had the will in him rebelled against God when the passions arose in rebellion against the will; and likewise, when the rulers of the people disdain the authority of God, the people in turn despise the authority of men. There remains, it is true, the usual expedient of suppressing rebellion by force; but to what effect? Force subdues the bodies of men, not their souls.[12]

All these matters are of vital importance for public welfare, and some of them are even included within the primary functions of the State, inasmuch as they involve the protection of natural rights. None of them can be adequately dealt with by private effort.

Industrial Regulation. Owing to the complexity of modern industrial conditions, this function of the State is more important than in any preceding age. Owing to its effect upon the pecuniary interests of individuals, it has been more strongly criticised than any other activity of the State. Not much opposition has been offered to State regulation of banks. All reasonable men recognize that the public must be protected through requirements concerning incorporation, minimum of capital and surplus, liability of stockholders, nature of investments, amount and kind of reserves, the issuing of notes, and public inspection and supervision.

The regulation of commerce, public utilities and manufactures, has a varied scope and may be exercised in various ways. Foreign commerce may be regulated through taxes and embargoes on imports and exports, and by other methods of restriction. The regulation of domestic commerce takes many forms: intoxicating liquors, tobacco, explosives, drugs and other commodities are subjected to a system of licensing, or special taxation, or other kinds of legal supervision; railroads are forbidden to exact more than certain maximum charges for carrying goods and passengers, and are compelled to maintain certain standards of service; and such municipal utilities as street railways and lighting concerns must submit to similar requirements. Commercial

[12] Encyclical, *Ad Beatissimi,* Nov. 1, 1914.

contracts which are clearly extortionate, such as loans of money at usurious rates, are generally prohibited by law. In this matter the policy of governments is not in accord with the individualistic theory that all technically "free" contracts ought to be legally enforced. As a matter of fact, such contracts are not free in any fair sense. All the foregoing regulations promote the public welfare and are evidently among the proper functions of the State.

The most important public regulation of manufactures is that which strives to prevent unfair dealing and extortion by monopolistic corporations. In some form this is a very ancient practice of the State. Many centuries ago, legislators became aware that human beings cannot be trusted to exercise monopoly power with fairness to either competitors or consumers. Today the most enlightened governments have numerous and complex statutes to prevent and punish both these forms of injustice. Such measures are clearly justified, not only to promote the public good, but also as an exercise of the primary function of the State, namely, the protection of natural rights. They are intended to prevent and punish unjust dealing and extortion. Nevertheless, they have not adequately attained that end. Additional measures are required, to limit still further the "individual freedom" of the monopolist to treat his fellows unjustly. Legal determination of maximum prices, government regulation of supply and distribution, and State competition in the manufacturing or other business carried on by a monopolistic concern,—are the principal new methods that have been suggested. In so far as they are necessary and would prove adequate to protect the general welfare, they can undoubtedly be classed among the proper functions of the State. Since the main object is to prevent the imposition of extortionate prices upon the consumer and the receipt of excessive profits and interest by the monopoly, these and all other regulatory measures are directed against that "rapacious usury, which, although more than once condemned by the Church, is nevertheless, under a different guise but with the like injustice, still practiced by covetous and grasping men."[13]

[13] Pope Leo XIII, *On the Condition of Labor.*

Probably the most necessary and beneficent group of industrial regulations are those which apply to the labor contract and the conditions of labor. The principal subjects covered are wages, hours of labor, child labor, woman labor, safety and sanitation in work places, accidents, sickness, old age and unemployment. As regards wages, legislation has been enacted regulating the manner and frequency of payment, and fixing minimum rates of remuneration. Underlying most of the latter measures is the theory that no wage earner should be required to accept less than the equivalent of a decent livelihood. So long as millions of workers are unable to obtain this decent minimum through their own efforts or through the benevolence of the employer, they have clearly the right to call upon the intervention of the State. In other words, the enactment of minimum wage legislation is among the State's primary as well as secondary functions. Laws prohibiting an excessively long working day, the employment of young children, the employment of women in occupations unsuited to their sex, the existence of unsafe and unsanitary work places,—are all likewise included among both the primary and the secondary functions of government. Legal provisions for the prevention and adjustment of industrial disputes, and to insure the workers against accidents, sickness, unemployment, invalidity and old age, have been made by various countries. They evidently represent a normal exercise of, at least, the secondary functions of the State.[14]

To the foregoing legal measures for the protection of labor may pertinently be applied the principle laid down by Pope Leo XIII: "Whenever the general interest, or any particular class suffers or is threatened with injury which can in no other way be met or prevented, it is the duty of the public authority to intervene." Indeed, the great Pontiff himself applied the principle quite specifically to the conditions and needs of the

[14] Cf. Social Reconstruction Program of the Four American Bishops, in *The Church and Labor* (Macmillan). An excellent and fundamental statement of the economic functions of the State will be found in *Institutiones Juris Naturalis*, by Theodore Meyer, S.J., II, pp. 683-689. Uninstructed persons who think that legislation for a minimum wage and for social insurance is "socialistic" will have a better notion of Catholic social teaching after reading these paragraphs.

working class. He said: "When there is question of defending the rights of individuals, the poor and helpless have a claim to especial consideration. The richer class have many ways of shielding themselves, and stand less in need of help from the State; whereas, those who are badly off have no resources of their own to fall back upon, and must chiefly depend upon the assistance of the State. And it is for this reason that wage-earners, who are undoubtedly among the weak and necessitous, should be specially cared for and protected by the government."[15]

Our discussion of the end and functions of the State may fittingly close with the following declaration of the great Catholic authority on law, Francisco Suarez:

"The object of civil legislation is the natural welfare of the community and of its individual members, in order that they may live in peace and justice, with a sufficiency of those goods that are necessary for physical conservation and comfort, and with those moral conditions which are required for private well-being and public prosperity."[16]

[15] Encyc., *On the Condition of Labor.*
[16] *De Legibus*, l. 3, c. 11, sec. 7.

11. LAW AND LIBERTY

Extracts from the Encyclical Letter,
Libertas Praestantissimum, June 20, 1888.

By Pope Leo XIII

Human liberty necessarily stands in need of light and strength to direct its actions to good and to restrain them from evil. Without this, the freedom of our will would be our ruin. First of all there must be law; that is, a fixed rule of teaching what is to be done and what is to be left undone. This rule cannot affect the lower animals in any true sense, since they act of necessity, following their natural instinct, and cannot of themselves act in any other way. On the other hand, as was said above, he who is free can either act or not act, can do this or do that, as he pleases, because his judgment precedes his choice. And his judgment not only decides what is right or wrong of its own nature, but also what is practically good and therefore to be chosen, and what is practically evil and therefore to be avoided. In other words, the reason prescribes to the will what it should seek after or shun, in order to the eventual attainment of man's last end, for the sake of which all his actions ought to be performed. This ordination of reason is called law. In man's free will, therefore, or in the moral necessity of our voluntary acts being in accordance with reason, lies the very root of the necessity of law. Nothing more foolish can be uttered or conceived than the notion that because man is free by nature, he is therefore exempt from law. Were this the case, it would follow that to become free we must be deprived of reason; whereas the truth is that we are bound to submit to law precisely because we are free by our very nature. For law is the

guide of man's actions; it turns him towards good by its rewards, and deters him from evil by its punishments.

Foremost in this office comes the natural law, which is written and engraved in the mind of every man; and this is nothing but our reason, commanding us to do right and forbidding sin. Nevertheless all prescriptions of human reason can have force of law only in as much as they are the voice and the interpreters of some higher power on which our reason and liberty necessarily depend. For, since the force of law consists in the imposing of obligations and the granting of rights, authority is the one and only foundation of all law—the power, that is, of fixing duties and defining rights, as also of assigning the necessary sanctions of reward and chastisement to each and all of its commands. But all this, clearly, cannot be found in man, if, as his own supreme legislator, he is to be the rule of his own actions. It follows therefore that the law of nature is the same thing as the eternal law, implanted in rational creatures, and inclining them to their right action and end; and can be nothing else but the eternal reason of God, the Creator and Ruler of all the world. To this rule of action and restraint of evil God has vouchsafed to give special and most suitable aids for strengthening and ordering the human will. The first and most excellent of these is the power of His divine grace, whereby the mind can be enlightened and the will wholesomely invigorated and moved to the constant pursuit of moral good, so that the use of our inborn liberty becomes at once less difficult and less dangerous. Not that the divine assistance hinders in any way the free movement of our will; just the contrary, for grace works inwardly in man and in harmony with his natural inclinations, since it flows from the very Creator of his mind and will, by whom all things are moved in conformity with their nature. As the Angelic Doctor points out, it is because divine grace comes from the Author of nature, that it is so admirably adapted to be the safeguard of all natures, and to maintain the character, efficiency, and operations of each.

What has been said of the liberty of individuals is no less applicable to them when considered as bound together in civil society. For, what reason and the natural law do for individ-

uals, that human law, promulgated for their good, does for the citizens of States. Of the laws enacted by men, some are concerned with what is good or bad by its very nature; and they command men to follow after what is right and to shun what is wrong, adding at the same time a suitable sanction. But such laws by no means derive their origin from civil society; because just as civil society did not create human nature, so neither can it be said to be the author of the good which befits human nature, or of the evil which is contrary to it. Laws come before men live together in society, and have their origin in the natural, and consequently in the eternal law. The precepts, therefore, of the natural law, contained bodily in the laws of men, have not merely the force of human law, but they possess that higher and more august sanction which belongs to the law of nature and the eternal law. And within the sphere of this kind of laws, the duty of the civil legislator is, mainly, to keep the community in obedience by the adoption of a common discipline and by putting restraint upon refractory and viciously inclined men, so that, deterred from evil, they may turn to what is good, or at any rate may avoid causing trouble and disturbance to the State. Now there are other enactments of the civil authority which do not follow directly, but somewhat remotely, from the natural law, and decide many points which the law of nature treats only in a general and indefinite way. For instance, though nature commands all to contribute to the public peace and prosperity, still whatever belongs to the manner and circumstances, and conditions under which such service is to be rendered must be determined by the wisdom of men and not by Nature herself. It is in the constitution of these particular rules of life, suggested by reason and prudence, and put forth by competent authority, that human law, properly so called, consists, binding all citizens to work together for the attainment of the common end proposed to the community, and forbidding them to depart from this end; and in so far as human law is in conformity with the dictates of nature, leading to what is good, and deterring from evil.

From this it is manifest that the eternal law of God is the sole standard and rule of human liberty, not only in each individual

man, but also in the community and civil society which men constitute when united. Therefore, the true liberty of human society does not consist in every man doing what he pleases, for this would simply end in turmoil and confusion, and bring on the overthrow of the State; but rather in this, that through the injunctions of the civil law all may more easily conform to the prescriptions of the eternal law. Likewise, the liberty of those who are in authority does not consist in the power to lay unreasonable and capricious commands upon their subjects, which would equally be criminal and would lead to the ruin of the commonwealth; but the binding force of human laws is in this, that they are to be regarded as applications of the eternal law, and incapable of sanctioning anything which is not contained in the eternal law, as in the principle of all law. Thus St. Augustin most wisely says: "I think that you can see, at the same time, that there is nothing just and lawful in that temporal law, unless what men have gathered from this eternal law."[1] If, then, by any one in authority, something be sanctioned out of conformity with the principles of right reason, and consequently hurtful to the commonwealth, such an enactment can have no binding force of law, as being no rule of justice, but certain to lead men away from that good which is the very end of civil society.[2]

[1] *De Libero Arbitrio*, lib. i, cap. 6, n. 15.

[2] "The State, then, has a sacred claim upon our respect and loyalty. It may justly impose obligations and demand sacrifices, for the sake of the common welfare which it is established to promote. It is the means to an end, not an end in itself; and because it receives its power from God, it cannot rightfully exert that power through any act or measure that would be at variance with the divine law, or with the divine economy for man's salvation. As long as the State remains within its proper limits and really furthers the common good, it has a right to our obedience. And this obedience we are bound to render, not merely on grounds of expediency but as a conscientious duty. 'Be subject of necessity, not only for wrath but also for conscience sake.'

"The end for which the State exists and for which authority is given it, determines the limit of its powers. It must respect and protect the divinely established rights of the individual and of the family. It must safeguard the liberty of all, so that none shall encroach upon the rights of others. But it may not rightfully hinder the citizen in the discharge of his conscientious obligation, and much less in the performance of duties which he owes to God. To all commands that would prevent him from worshipping

Therefore, the nature of human liberty, however it be considered, whether in individuals or in society, whether in those in command or in those who obey, supposes the necessity of obedience to some supreme and eternal law, which is no other than the authority of God, commanding good and forbidding evil. And so far from this most just authority of God over men, diminishing, or even destroying their liberty, it protects and perfects it, for the real perfection of all creatures is found in the prosecution and attainment of their respective ends; but the supreme end to which human liberty must aspire is God.

These precepts of the truest and highest teaching, made known to us by the light of reason itself, the Church, instructed by the example and doctrine of her divine Author, has ever propagated and asserted; for she has ever made them the measure of her office and of her teaching to the Christian nations. As to morals, the laws of the Gospel not only immeasurably surpass the wisdom of the heathen, but are an invitation and an introduction to a state of holiness unknown to the ancients; and, bringing man nearer to God, they make him at once the possessor of a more perfect liberty. Thus the powerful influence of the Church has ever been manifested in the custody and protection of the civil and political liberty of the people. The enumeration of its merits in this respect does not belong to our present purpose. It is sufficient to recall the fact that slavery, that old reproach of the heathen nations, was mainly abolished by the beneficent efforts of the Church. The impartiality of law and the true brotherhood of man were first asserted by Jesus Christ; and His apostles reechoed His voice when they declared that in future there was to be neither Jew, nor Gentile, nor Barbarian, nor Scythian, but all were brothers in Christ. So powerful, so conspicuous in this respect, is the influence of the Church, that experience abundantly testifies how savage customs are no longer possible in any land where she has once set her foot; but that gentleness speedily takes the place of cruelty, and the light of truth quickly dispels the darkness of barbarism.

the Creator in spirit and truth, the citizen will uphold his right by saying with the Apostles: 'We ought to obey God rather than men.' ''—From the Pastoral Letter of the American Hierarchy, 1920.

Nor has the Church been less lavish in the benefits she has conferred on civilized nations in every age, either by resisting the tyranny of the wicked, or by protecting the innocent and helpless from injury; or finally by using her influence in the support of any form of government which commended itself to the citizens at home, because of its justice, or was feared by their enemies without, because of its power.

Moreover, the highest duty is to respect authority, and obediently to submit to just law; and by this the members of a community are effectually protected from the wrongdoing of evil men. Lawful power is from God, and whosoever resisteth authority resisteth the ordinance of God; wherefore obedience is greatly ennobled when subjected to an authority which is the most just and supreme of all. But where the power to command is wanting, or where a law is enacted contrary to reason, or to the eternal law, or to some ordinance of God, obedience is unlawful, lest, while obeying man, we become disobedient to God. Thus, an effectual barrier being opposed to tyranny, the authority in the State will not have all its own way, but the interests and rights of all will be safeguarded—the rights of individuals, of domestic society, and of all the members of the commonwealth; all being free to live according to law and right reason; and in this, as We have shown, true liberty really consists.

We must now consider briefly liberty of speech, and liberty of the Press.[3] It is hardly necessary to say that there can be no such right as this, if it be not used in moderation, and if it pass beyond the bounds and end of all true liberty. For right is a moral power which—as We have before said and must again and again repeat—it is absurd to suppose that nature has accorded indifferently to truth and falsehood, to justice and injustice. Men have a right freely and prudently to propagate throughout the State what things soever are true and honorable, so that as many as possible may possess them; but lying opinions, than which no mental plague is greater, and vices which corrupt the heart and moral life, should be diligently repressed by public

[3] See sec. 12 in chapter II.

authority, lest they insidiously work the ruin of the State. The excesses of an unbridled intellect, which unfailingly end in the oppression of the untutored multitude, are no less rightly controlled by the authority of the law than are the injuries inflicted by violence upon the weak. And this all the more surely, because by far the greater part of the community is either absolutely unable, or able only with great difficulty, to escape from illusions and deceitful subtleties, especially such as flatter the passions. If unbridled license of speech and of writing be granted to all, nothing will remain sacred and inviolate; even the highest and truest mandates of nature, justly held to be the common and noblest heritage of the human race, will not be spared. Thus, truth being gradually obscured by darkness, pernicious and manifold error, as too often happens, will easily prevail. Thus, too, license will gain what liberty loses; for liberty will ever be more free and secure, in proportion as license is kept in fuller restraint. In regard, however, to all matters of opinion which God leaves to man's free discussion, full liberty of thought and of speech is naturally within the right of every one; for such liberty never leads men to suppress the truth, but often to discover it and make it known.

A like judgment must be passed upon what is called liberty of teaching. There can be no doubt that truth alone should imbue the minds of men; for in it are found the well-being, the end, and the perfection of every intelligent nature; and therefore nothing but truth should be taught both to the ignorant and to the educated, so as to bring knowledge to those who have it not, and to preserve it in those who possess it. For this reason it is plainly the duty of all who teach to banish error from the mind, and by sure safeguards to close the entry to all false convictions. From this it follows, as is evident, that the liberty of which We have been speaking, is greatly opposed to reason, and tends absolutely to pervert men's minds, in as much as it claims for itself the right of teaching whatever it pleases—a liberty which the State cannot grant without failling in its duty. And the more so, because the authority of teachers has great weight with their hearers, who can rarely decide for

themselves as to the truth or falsehood of the instruction given to them.

Wherefore, this liberty also, in order that it may deserve the name, must be kept within certain limits, lest the office of teaching be turned with impunity into an instrument of corruption. Now truth, which should be the only subject-matter of those who teach, is of two kinds, natural and supernatural. Of natural truths, such as the principles of nature and whatever is derived from them immediately by our reason, there is a kind of common patrimony in the human race. On this, as on a firm basis, morality, justice, religion, and the very bonds of human society rest; and to allow people to go unharmed who violate or destroy it would be most impious, most foolish, and most inhuman. But with no less religious care must we preserve that great and sacred treasure of the truths which God Himself has taught us. By many and convincing arguments, often used by defenders of Christianity, certain leading truths have been laid down: Namely, that some things have been revealed by God; that the only-begotten Son of God was made flesh, to bear witness to the truth; that a perfect society was founded by Him—the Church namely, of which He is the head, and with which He has promised to abide till the end of the world. To this society He entrusted all the truths which he had taught, in order that it might keep and guard them and with lawful authority explain them; and at the same time He commanded all nations to hear the voice of the Church, as if it were His own, threatening those who would not hear it with everlasting perdition. Thus it is manifest that man's best and surest teacher is God, the source and principle of all truth; and the only-begotten Son, who is in the bosom of the Father, the Way, the Truth, and the Life, the true Light which enlightens every man and to whose teaching all must submit: *And they shall all be taught of God.*[4] In faith and in teaching of morality, God Himself made the Church a partaker of His divine authority, and through His heavenly gift she cannot be deceived. She is therefore the greatest and most reliable teacher of mankind, and in her dwells an inviolable right to teach them. Sustained

[4] John vi, 45.

by the truth received from her divine Founder, the Church has ever sought to fulfil holily the mission entrusted to her by God; unconquered by the difficulties on all sides surrounding her, she has never ceased to assert her liberty of teaching, and in this way the wretched superstition of Paganism being dispelled, the wide world was renewed unto Christian wisdom. Now, reason itself clearly teaches that the truths of divine revelation and those of nature cannot really be opposed to one another, and that whatever is at variance with them must necessarily be false. Therefore the divine teaching of the Church, so far from being an obstacle to the pursuit of learning and the progress of science, or in any way retarding the advance of civilization, in reality brings to them the sure guidance of shining light. And for the same reason it is of no small advantage for the perfecting of human liberty, since our Saviour Jesus Christ has said that by truth is man made free: *You shall know the truth, and the truth shall make you free.*[5] Therefore there is no reason why genuine liberty should grow indignant, or true science feel aggrieved, at having to bear the just and necessary restraint of laws by which, in the judgment of the Church and of Reason itself, human teaching has to be controlled. The Church, indeed—as facts have everywhere proved—looks chiefly and above all to the defence of the Christian faith, while careful at the same time to foster and promote every kind of human learning. For learning is in itself good, and praiseworthy, and desirable; and further, all erudition which is the outgrowth of sound reason, and in conformity with the truth of things, serves not a little to confirm what we believe on the authority of God. The Church, truly, to our great benefit, has carefully preserved the monuments of ancient wisdom; has opened everywhere homes of science, and has urged on intellectual progress by fostering most diligently the arts by which the culture of our age is so much advanced. Lastly, we must not forget that a vast field lies freely open to man's industry and genius, containing all those things which have no necessary connection with Christian faith and morals, or as to which the Church, exercising no authority, leaves the judgment of the learned free

[5] John viii, 32.

and unconstrained. From all this may be understood the nature and character of that liberty which the followers of Liberalism so eagerly advocate and proclaim. On the one hand, they demand for themselves and for the State a license which opens the way to every perversity of opinion; and on the other, they hamper the Church in divers ways, restricting her liberty within narrowest limits, although from her teaching not only is there nothing to be feared, but in every respect very much to be gained.

Another liberty is widely advocated, namely, liberty of conscience. If by this is meant that every one may, as he chooses, worship God or not, it is sufficiently refuted by the arguments already adduced. But it may also be taken to mean that every man in the State may follow the will of God and, from a consciousness of duty and free from every obstacle, obey His commands. This, indeed, is true liberty, a liberty worthy of the sons of God, which nobly maintains the dignity of man, and is stronger than all violence or wrong—a liberty which the Church has always desired and held most dear. This is the kind of liberty the apostles claimed for themselves with intrepid constancy, which the apologists of Christianity confirmed by their writings, and which the martyrs in vast numbers consecrated by their blood. And deservedly so; for this Christian liberty bears witness to the absolute and most just dominion of God over man, and to the chief and supreme duty of man towards God. It has nothing in common with a seditious and rebellious mind; and in no tittle derogates from obedience to public authority; for the right to command and to require obedience exists only so far as it is in accordance with the authority of God, and is within the measure that He has laid down. But when anything is commanded which is plainly at variance with the will of God, there is a wide departure from this divinely constituted order, and at the same time a direct conflict with divine authority; therefore it is right not to obey.

12. THE MORAL OBLIGATION OF CIVIL LAW

By Rev. John A. Ryan, D.D.

The State performs its functions by means of law. Through the direct or indirect authorization of law, taxes are collected, public money is expended, public services, such as, the post office, the public schools, the department of justice, the fire department, the police department, are administered, and the various regulatory measures affecting individuals and associations are ordained and enforced. It is law that warrants and supports every civil act performed by any official in any of the three great departments of government, the executive, the legislative and the judiciary. When a public official proceeds without the authorization of law or exceeds the scope of the law, his action has no civil validity.

The authority of the State to make laws is derived from God.[1] He has endowed men with such qualities and needs that they cannot live reasonable lives without the State. Therefore, He wishes the State to exist and to function in such a way as to attain this end, to promote man's temporal welfare. It does so by means of law. Hence civil law is genuine moral law, not merely a kind of legal or physical coercion. It binds in conscience. Herein it differs from the rules of a social club. The latter do not produce moral obligation. Even though they should be disregarded to such an extent as to destroy the club, its members would suffer no vital injury. On the other hand, men are deprived of a necessary means to human life and development when there is general disobedience of the laws of the State. The moral law which binds men to live reasonable lives,

[1] Cf. Pope Leo XIII, *The Christian Constitution of States*, p. 2. of this volume.

obliges them to adopt one of the essential means to this end, that is, to maintain the State and to obey its laws.

Such is the rational basis of the doctrine laid down in Holy Scripture, and taught without variation by the Catholic Church. According to this doctrine, the civil law binds in conscience, as such; not because it includes, nor only in so far as it includes, natural, or supernatural, or esslesiastical law.[2]

No declaration of any Church authority can be cited in favor of the contrary opinion. A few individual writers have held it, but the overwhelming majority of theologians teach that the civil law is morally binding on its own account, because of the moral authority possessed by the State.[3]

Of course, all ethically valid civil laws must be in harmony with the moral law of nature. A statute which is contrary to a precept of the natural law, has no moral force, however solemnly it may have been enacted, or formidably sanctioned, or vigorously enforced. Such an enactment is not law at all, but, as St. Thomas calls it, "a species of violence."

CIVIL LAW BASED ON NATURAL LAW

Indeed, all civil law may properly be regarded as either a reaffirmation of the natural law, or as an application of its precepts, principles or derived conclusions.[4] Of the former kind are the statutes forbidding theft, assault, and adultery. To the latter class belong the laws which determine individual property rights and prescribe the imposition and collection of taxes, and ordinances for the regulation of traffic on streets and roads. The natural law dictates that men should acquire and use external goods with a just regard to the rights of their fellows, but it does not inform them just how this requirement is to be observed and applied in particular cases. In virtue of

[2] Cf. Bouquillon, *Theologia Moralis Fundamentalis*, no. 223.

[3] The greatest authority on law among Catholic theologians, Francisco Suarez, S.J., declares that this is the "common opinion of Catholics." His own defense of the proposition is summed up in three declarations: The civil legislator makes laws as the minister of God; the legislator is required by the divine and natural law to pass laws; this power and its exercise are necessary for the common good. *De Legibus*, lib. III, cap. 21.

[4] Cf. Cronin, *The Science of Ethics*, II, 599, 600.

the natural law, men are obliged to maintain the government, but there is no specific precept requiring this end to be attained through a certain form of taxation. We are enjoined by the natural law to refrain from inflicting physical injury upon the neighbor in our common use of the public streets, as well as in other relations, but we are not told whether the speed limit should be ten miles an hour or twenty. In all such cases, the general provisions and precepts of the natural law stand in need of specific and precise determination by the positive law. Civil statutes for this purpose derive their immediate moral authority and validity from the State itself. Their binding force cannot come directly from the natural law, since the latter is so general in its provisions that other specific determinations, for example, other property regulations and traffic regulations, might be equally in harmony with these general provisions. Natural law cannot oblige men to comply with its general provisions in a particular way, when another way would be equally efficacious. The function of prescribing one method rather than another belongs to the State. Its right to make such a prescription flows from the fact that it is the authorized and the only competent agency to determine and enforce necessary and uniform methods of carrying into effect the general principles of the natural law in all such matters. The obligation of the citizens to observe these methods and regulations is based ultimately on the natural law, but its immediate and formal basis is the State.[5]

The objection might be raised that all the foregoing instances and the reasoning that they are intended to illustrate, refer only to civil ordinances which are *necessary*. The moral obligation to obey such statutes is as clear as the obligation to maintain

[5] It is in this sense that St. Thomas speaks of civil law as a "participation in the eternal and natural law." Suarez draws the distinction clearly between a civil law conceived as obligatory because and when it contains or applies a *specific precept* of the natural law, or a necessary conclusion therefrom, and a civil law, or the whole body of civil law, conceived as obligatory because it is based on the *general principle* of the natural law which requires ordinances to be obeyed. He declares that if those who deny that the civil law binds in conscience hold to the latter instead of the former conception, the dispute is perhaps merely one of language. They agree with him in principle. *Idem, loc. cit.*

an effective political organization. In both cases we can trace the compelling and obligatory influence of the natural law. Its precepts require men to deal justly and charitably with one another, and to make and obey whatever civil regulations are necessary to attain this end. But the case seems to be different with those civil statutes which prescribe and administer things that are merely *useful*. Government regulation of street traffic is necessary, but government ownership of railroads is not necessary. Whence comes the moral obligation upon the citizens to obey the law which forbids them to own a railroad?

The answer is that the obligation is derived ultimately from the natural law, precisely as in the case of the traffic ordinance. Just as the State has the authority to prescribe one maximum rate of speed rather than another, so it has the right to determine that goods and passengers shall be carried by the government rather than by private corporations. In both cases the end is the common welfare. In both cases the State must adopt some means to attain this end. In each case more than one means would be adequate. Some speed limit must be prescribed, but it need not be fifteen miles per hour rather than twenty. As compared with the latter, the former is merely useful, and *vice versa*. The case of the railroads is exactly parallel. They are necessary for the common welfare. They can attain this end substantially under either private or public ownership. The issue between the two methods is merely one of utility, and the State is not clearly obliged to choose one rather than the other. But it must authorize some one of the two. When it adopts government ownership, its action is morally binding on the citizens for the same reason that makes its traffic regulations morally binding. That is, it is determining a method of promoting the common good, in virtue of its authority as the only competent determinant of such matters. The obligation of the citizens to accept the determination actually made, *i. e.*, government ownership, comes immediately from the authority of the State, but ultimately from that principle of the natural law which dictates that men should support all the legitimate activities of the State.

Individual citizens may think, and their opinion may be cor-

rect, that government ownership of railroads is less useful, less conductive to the common good, than private ownership. Nevertheless, they are morally obliged to accept the former for the sake of that same common good. Their refusal to do so would cause greater injury to the community than the continuation of and their acquiescence in the duly established arrangement. It would imply that a group of individuals may at any time reject any civil ordinance with which they do not agree. The contradiction is obvious between this position and the requirements of right reason, of the natural law, of the common good, and of individual welfare.

The sum of the matter is that every law enacted by a legitimate government, and not contrary to any provision of the natural law, whether its prescriptions are evidently necessary or merely useful, is in some degree morally binding on the citizens. The fundamental reason is the necessity, according to the divine plan, of an effectively functioning State for human welfare.

It has just been said that every genuine civil enactment is morally binding "in some degree." This phrase brings up for consideration certain modifications, or qualifications, of the general principle. It suggests these questions: Do civil laws bind under pain of mortal sin? Does their obligatory character depend upon the will of the legislator? Are some civil statutes "purely penal"? Does the validity of civil laws depend upon their acceptance by the people?

CIVIL LAWS OF GRAVE OBLIGATION

To the first of these questions the answer of the great majority of Catholic writers is in the affirmative. The reason is tersely stated by Suarez: Inasmuch as civil law binds in conscience, it necessarily produces a degree of obligation proportionate to its subject matter; if the latter is of grave importance, the obligation of obeying the law will likewise be grave.[6] Generally speaking, the person who violates a civil statute which prescribes some action of great importance for the commonwealth, is guilty

[6] Op. cit., lib. 3, cap. 24, no. 2.

of mortal sin. This proposition can be logically rejected only on the assumption that no civil law can be of great importance.

Such is the obligatory force of a momentous law, considered in itself. But we are confronted with the second question raised above. Does the obligation depend upon the will of the legislator? It is the unanimous, or practically unanimous, teaching of Catholic authorities that the intention of creating a moral obligation is of the essence of law, so that, a prescription by legislators who positively and explicitly intended that it should not bind in conscience, would not be a true law. It would be merely a direction, a counsel, or an expression of legislative preference. If the *existence* of moral obligation depends upon the will of the legislator, the same dependence must logically be predicated of the *degree* of obligation. Hence, the general opinion among Catholic moral theologians is that the legislator has the authority to render grave laws only slightly obligatory.[7] That is, a law which of itself would bind under pain of mortal sin, brings upon the transgressor merely venial guilt when this is the desire and intention of the legislator.

In order that a civil law should become obligatory to a grave degree two conditions are, therefore, necessary: First, that the subject matter be of great importance; second, that the legislator should intend the law to have this effect in the forum of conscience. Either of these conditions lacking, the law binds only under pain of venial sin. If the subject matter is of slight importance the legislator cannot perform the inherently contradictory feat of making the obligation grave; if the legislator does not wish a gravely important law to bind under pain of mortal sin it will not be obligatory in this degree.

THE INTENTION OF THE LEGISLATOR

A very important question arises here concerning the form which the legislator's intention must take in order to make an obligation slight which from the nature of the subject matter would be grave. Suppose he does not think about moral obligation at all, but merely has in mind the enactment of a law. In that

[7] Cf. Suarez, op. cit., lib. 3, cap. 27.

case the law will bind in conscience, and the degree of the obligation will be determined by the importance of the subject matter. This is the normal effect of a true law, and it is always produced, so long as it is not positively excluded by the intention of the legislator. Suppose that the legislator explicitly desires that the law should be obligatory, but does not think about the degree of obligation. As in the former case, the obligation will be determined by the subject matter. If the latter is gravely important the law will be gravely obligatory. Therefore, a civil law of great importance always binds under pain of mortal sin, unless the legislator forms a positive intention to the contrary. A merely negative attitude toward the obligation will have no effect upon the obligation.[8]

The opponents of the doctrine that the legislator can render slight the obligation of a grave law, contend that the degree of binding force carried by a civil law depends exclusively upon the subject matter. The legislator's power is merely that of making or not making the statute.[9] This argument would lead logically to the conclusion that the existence of any obligation at all is entirely independent of the will of the legislator. Should the members of a legislative body explicitly will that their enactments should not be binding in conscience this reservation would be without effect. Suarez declares that such an enactment is not a true law; but this seems to be mostly a question of language.

Consider an ordinance which is clearly necessary for the common good, as, that which regulates the speed of vehicles. Does not the very necessity of this measure make it binding in conscience? It is true that a different law might be equally adapted to meet this necessity; and the inference might be drawn that the citizen who observed the provisions of this alternative and hypothetical rule would be under no obligation to obey the existing law. The reply is that the common good requires the enactment and the observance of *one* ordinance. Human welfare is not safeguarded through a kind of private interpretation by the citizens themselves of what constitutes a reasonable rule or

[8] Cf. Suarez, loc. cit.
[9] Cf. Suarez, *ibidem.*

standard. Now it is the proper and necessary function of the legislators to enact this uniform regulation. Once it has been chosen out of several possible ordinances, it becomes morally binding because of its necessity for the common good, no matter what the legislators may think of obligation. It is reasonable and necessary that they determine the provisions of the law, but it is neither reasonable nor necessary that they have power to determine the question of its moral obligation.

Even laws which are not necessary for the common welfare may conceivably be obligatory against the desires of the legislators. For the common good may require that a law of this sort, even though no more useful than the alternative arrangement, be obeyed for the sake of social order. Violations of it might be detrimental to the public good merely because they were violations of duly enacted law. In such a situation, why should the unwillingness of the legislator to impose moral obligation have any moral effect or significance?

Whatever may be thought of the foregoing argument, the question whether the legislator has power to render a grave law only slightly obligatory, has no practical importance in modern communities. No legislative body ever thinks of exercising such power. Therefore, modern civil laws dealing with gravely important matters always produce their normal effect of binding under pain of mortal sin.[10]

The doctrine that the moral obligation of civil law depends to some extent upon the intention of the legislator, is sometimes made the basis of an extraordinary view of modern civil legislation. It is nothing less than the conclusion that the ordinances of practically all modern legislative bodies have no binding force in conscience. Laws do not bind in conscience unless the legislator intends them so to bind; now contemporary lawmakers cannot have such an intention since they do not believe in the existence of genuine moral obligation. Such is the argument. Tanquerey rejects it on the ground that whatever may be their general and theoretical attitude toward the reality of moral obligation, modern legislators do desire their enactments to have the utmost possible force and authority; hence they *im-*

[10] Cf. Meyer, *Institutiones Juris Naturalis*, II, p. 569.

plicitly intend them to be morally binding.[11] Bouquillon takes a similar position, declaring that the legislator need not expressly intend to impose an obligation in conscience, that it is sufficient for him to have the intention of issuing a genuine command.[12] Lehmkuhl holds the same view as Tanquerey and Bouquillon, and points out that if explicit intention to bind the conscience were indispensable, the laws enacted by Pagan rulers would be without obligatory force, which is surely contrary to the teaching of Holy Scripture.[13] Suarez declares that the design of the legislator to make a true law suffices, and that the formal intention to bind in conscience is not necessary. He notes that legislators, particularly unbelievers, rarely advert to the question of moral obligation.[14] Indeed, it seems to be the general opinion of the moral theologians that an implicit intention suffices; that is, the intention that the enactment should have all the moral authority which attaches to a genuine law.

This conclusion seems to be entirely consistent with the "necessity of intention" doctrine, as regards two classes of lawmakers who have no explicit desire to bind in conscience; namely, those who believe that civil law is morally obligatory but do not advert to this fact at the moment of legislating, and those who theoretically disbelieve in genuine moral obligation, but who are willing that if perchance it does exist it should attach to their ordinances. In the minds of both these classes, there is inherent a true implicit intention to make the law binding in conscience.

As regards those lawmakers who are firmly persuaded that civil laws are not obligatory in the proper sense, for example, those who, with the English jurist, John Austin, reduce the moral obligation of legal statutes to the evil chance of incurring the penalty for violation,—it is not clear that there exists even an implicit intention to produce moral obligation.[15] Tanquerey contends for the reality of such an intention on the ground that the legislator desires his laws to exercise all possible compelling

[11] *Theologia Moralis Fundamentalis*, no. 343.
[12] *Theologia Moralis Fundamentalis*, no. 223.
[13] *Theologia Moralis*, I, no. 211.
[14] Op. cit., lib. 3, cap. 27, no. 7.
[15] Cf. Slater, *Questions of Moral Theology*, pp. 279-288.

force upon the will of the citizens, and therefore is quite willing that the latter should feel bound in conscience. Nevertheless, this is not an implicit intention to impose *objective* moral obligation. It does not recognize the objective bond which is the essence of genuine obligation, the bond between the will of the law giver and the will of the law receiver. The only thing covered by such an intention is the state of mind of the citizen. That this should be affected by a persuasion of obligation, the lawmaker is perfectly willing; that the objective moral bond constituting obligation should extend from his will to the will of the citizen, the lawmaker has not even an implicit intention, for he totally rejects the possibility of such a bond. His intention comprises only a subjective condition, not an objective relation. It is hard to see how such legislators can have even an implicit intention, either to make a true law, or to impose moral obligation.

As a matter of fact, it is very doubtful that many contemporary legislators deny to civil laws the possibility of moral obligation in the absolute and comprehensive manner supposed in the preceding paragraph. Probably the great majority of them accept, at least in some vague way, the existence, or at any rate, the possibility of a juristic moral bond between law giver and law receiver. This is a sufficient basis for an implicit intention to bind in conscience. Therefore, the general opinion of moral theologians that modern civil laws bind in conscience, is consistent with their teaching that this moral force is in some degree dependent upon the will of the legislator. To be sure, the case for the moral obligation of contemporary laws becomes clearer and simpler if we accept the theory that their obligatory character is independent of the legislator's will and is inherent in the laws themselves.

PURELY PENAL LAWS

The third question raised above concerns those laws which jurists and theologians call "purely penal," or "merely penal," or "disjunctive." They are defined as laws which oblige the citizen either to obey them or to accept the penalty appointed

for their violation. The obligation is not absolute, but conditional. If the citizen is ready to submit to the penalty he can licitly disobey the provisions of the law. Generally speaking, however, he is not bound in conscience to undergo the penalty until it has been formally imposed by the court. He is not obliged to give himself up, nor to forego his civil right of legal defence.

The great majority of moral theologians hold that the legislator has authority to enact laws of this sort. In the first place, it is contended that the object of the law and the common good may sometimes be more effectively promoted by a statute which leaves the citizen free to disobey the law and become morally liable to the penalty, than by one which gives no such choice but entails moral guilt every time it is violated. Such are laws which men transgress with uncommon frequency, but whose object can be adequately attained through the infliction of penalties upon their violators. A purely penal law is in some sense a concession to human weakness. The second reason given by the theologians to support the proposition under consideration is the legislator's power over the obligatory character of his enactments. Just as he can determine that a gravely important law shall bind only under pain of venial sin, so he can make the obligation of certain laws disjunctive. That is, he may attach the obligation either to the observance of the law or to the acceptance of the penalty, so that the citizen has the option of being bound to the latter instead of the former.

It is to be observed that a purely penal law must carry some obligation. The legislator cannot enact a statute which would bind the citizen neither to obey its provisions nor to accept its penalties.[16] Such an enactment would not be a true law, inasmuch as it would lack an essential element, namely, moral binding force. Hence the legislator must have at least the implicit intention of morally obliging the citizen to accept the penalty in case of violation.

It seems, however, that the practical obligation of a purely penal law is attenuated almost to the vanishing point. If the violator of the law is not obliged to make known his transgres-

[16] Cf. Suarez, op. cit., lib. 3, cap. 27, no. 3.

sion, nor to waive his legal right of defence, his duty of "accepting the penalty" is merely that of submitting to the sentence of the court. That is, he must not break jail nor evade payment of a fine. When the offender evades apprehension, he escapes all moral obligation; when he successfully contests prosecution, he likewise remains free from moral accountability; when he is convicted, his moral obligation is merely that of omitting actions from which in most cases he is physically restrained by the sheriff or the policeman. In a word, the moral obligation of a purely penal law is next to nothing, its moral sanction, *i. e.*, the effectiveness of the moral element in preventing violations, is practically nothing.

These facts create a strong presumption that the field of purely penal law is extremely limited. The objective reason why civil law carries moral obligation is found ultimately in human welfare. If the law be deprived, or all but deprived, of its moral element its efficacy for the promotion of human welfare is greatly, even fatally, weakened. Nevertheless, the assertion is sometimes made that in our day all civil laws are merely penal.

Some who use this language, do not mean what they seem to mean. They wish to assert the theory, sufficiently discussed above, that modern laws do not bind in conscience, inasmuch as modern legislators have not the proper intention. If this contention were sound civil legislation would not even rise to the dignity of purely penal enactments; for the latter do entail some moral obligation. Those who, using the phrase in its proper sense, declare that all modern civil legislation is purely penal, are happily neither numerous nor authoritative. According to the common opinion of moral theologians, the presumption is always in favor of complete obligation.[17] Like all other presumptions, this one can be overcome only by positive facts and arguments. With regard to any particular law, the burden of proof rests upon him who contends that it is purely penal.

As commonly given by theologians, there are three tests by which a civil law may be adjudged purely penal: First, the declaration of the legislator; second, the attitude of popular tradition and custom; third, the enactment of a penalty so

[17] Cf. Tanquerey, op. cit., no. 347.

severe that it is out of all proportion to the law's importance. However, the second and third of these criteria are not valid universally; for the custom may be socially injurious, and the heavy penalty may be designed to prevent unusual frequency of violation, not to indicate that the law is to be regarded as purely penal.

Bouquillon adds another restriction which seems to be fundamental. It is that no law can be reasonably regarded as purely penal unless the burden or penalty attached to its violation is *specifically* adapted to attain the end of the law.[18] The penalty must be such as to compensate for the failure of the law; it may not be merely coercive. Thus, heavy fines may offset the loss to the public treasury through the non-observance of tax laws. In such a case, the law might fairly be interpreted as purely penal. But fines and imprisonment would not adequately achieve the end of a traffic ordinance, *i. e.*, safeguarding life and property. It is not easy to controvert this argument.

POPULAR ACCEPTANCE

The final question concerning the degree of obligation attaching to civil laws, is whether their binding force depends upon popular acceptance or ratification. At first sight, an affirmative answer would seem to contradict the general doctrine of the foregoing pages, namely, that civil legislation binds in conscience. However, there is no necessary contradiction; for civil ordinances might conceivably not attain the complete character of laws until they had been ratified by the people. In that supposition, the people would constitute an essential part of the legislative authority. The obligation of individual citizens to obey a statute would begin when the latter had been formally accepted by the people as a whole. Only then would "the will of the legislator" have become fully manifest and formally effective.

Suarez informs us that in his time this was the commonly held opinion of the jurists.[19] He cites eight or ten important names,

[18] Op. cit., p. 353.
[19] Op. cit., lib. 3, cap. 19, no. 7.

and admits that their view seems to have been anticipated by Aristotle. Their argument was briefly as follows: In order to make binding laws, the legislator must have both the authority and the will. In fact, he has neither. That he lacks moral *power* to legislate validly without the people's consent, is shown by the fact that his authority to govern and to make any laws at all is derived from the people; and they have given him legislative authority on condition that his ordinances shall become binding only when accepted by the people. That this condition is attached to the grant of authority, is evident from the "most ancient usage of the Roman people," and from the fact that popular acceptation is the best indication that a law really promotes the common good, just as the contrary attitude of the people proves the law to be socially harmful and thus without validity. The *will* to make binding laws without the consent of the people is wanting to the legislator because he cannot have a genuine intention of doing something for which he lacks authority.

In passing it is worthy of note that these ultra-democratic jurists all wrote before the beginning of the seventeenth century. This was the period when Catholic teaching supported political absolutism and political oppression generally, according to the perverted notions that still pass in many quarters as history. Major, one of the writers cited by Suarez, declared that the community is superior to the prince in all things that pertain to sovereignty; yet this doctrine gives many of us a disagreeable shock when it falls upon our ears in such a modernized version as "the people are the masters, the public official is their servant." It is likewise noteworthy that in support of their theory of popular acceptance of laws, these writers appeal to a principle which no one disputed in their day, namely, that rulers and legislators derive their authority from the people. The inference drawn from this principle by the jurists was not admitted by the moral theologians, but the principle itself was universally received.

Generally and *per se,* popular acceptance is not necessary for the validity of a civil law. Such is the unanimous teaching of the moral theologians. As stated by Suarez, the following are

the main reasons which support this principle.[20] In every State that is not a pure democracy, the people have transferred supreme political power to the rulers and legislators, and have not retained the right of accepting or rejecting legislation. Secondly, the authority to legislate would be plainly futile if the people were morally free to obey or not to obey. Thirdly, usage shows that laws are held to be binding as soon as they have been regularly enacted and promulgated. In short, civil laws are obligatory without popular ratification, on account of the original grant of power to the rulers, on account of universal custom, and because this is necessary for the common good. It is not possible to overthrow this argument.

The general principle is subject, however, to certain qualifications and exceptions. Suarez notes that popular acceptance of the law is essential to its binding force when the people have attached that condition to the grant of legislative power. In the kingdom of Aragonia (a part of Medieval and benighted Spain, be it noted!) he says, the laws of the monarch do not become binding until they are ratified in public assemblies. On the same principle, certain enactments of legislative bodies in Switzerland, the United States, and New Zealand obtain the full force of law only when they have been approved by a popular referendum. Even in these States, the great majority of laws are recognized as valid as soon as they have been promulgated by the supreme legislative authority.

In the second place, Suarez points out that when a law is very frequently disregarded by the greater part of the people, the legislator may, through tacit consent, permit the law to be deprived of binding force. However, this is not an instance of direct popular authority over the law, but rather of revocation by the legislator. His tacit repeal of the law is indeed, occasioned by popular refusal to accept. In the third place, the law does not bind if it is not just, for an unjust law is no law at all. Fourthly, a law which is unreasonably burdensome to the people may sometimes lack obligatory force,—at least when it is so harsh that it is tantamount to an unjust enactment. Finally, when the majority of the people disregard the law to such an

[20] Op. cit., lib. 3, cap. 19, no. 7.

extent and in such a way that its observance by a minority becomes detrimental to the State, it ceases to bind the individual citizen.

To sum up: The Catholic Church, as well as natural reason, teaches that civil law binds in conscience. The ultimate basis of this obligation is the natural law; the immediate basis is the authority of the State. Civil laws of grave importance are gravely obligatory, unless the legislator formally intends their binding force to be slight. The general teaching of moral theologians is that a law is not binding without at least the implicit intention of the legislator. Some civil laws may be purely penal, but their number is probably small. In general, civil laws are binding without popular ratification.

13. THE DUTIES OF THE CITIZEN

By Rev. John A. Ryan, D.D.

The obligation of the citizen to obey civil laws does not exhaust his duties to the State. So important is the State and its functions that it gives rise to a special kind of justice. This is called by the moral theologians legal justice, and it is commonly defined as that virtue which inclines the citizen to render to the community what is due it for the common good.[1] This means not only obedience to the laws, but all those actions, political and social, which are necessary for the common welfare. Legal justice binds both the ruler and the citizen. It obliges the former to make the common welfare the object of all his official acts. It obliges the citizen and the public official alike to comply with the laws, and to give due consideration to the needs of the State in all their actions and relationships.

The particular duties imposed upon public officials by the virtue of legal justice, can be stated summarily in a few paragraphs. The general obligation of promoting the social good implies, obviously, that the executives, the judge, the lawmaker, are bound to prefer that end to their private advantage. The man who regards public office as an opportunity for private gain, except incidentally and as a necessary consequence of faithful public service, is false to his trust and violates legal justice. To accept a bribe for aid in the enactment of a bad law, for negligent or oppressive administration of the law, or for unjust judicial conduct, is an evident moral wrong. To obtain some advantage on the occasion of proper official actions, for example, through some form of "graft," is likewise a violation of legal justice. Such conduct is generally forbidden by the civil law; at any rate, it renders right judgment and adequate perform-

[1] Cf. Vermeersch, *Quaestiones de Justitia*, pp. 39-49.

ance of official duties extremely difficult. Public officials are not justified in exposing themselves to such a grave temptation. What is true of their own private advantage applies likewise to that of their friends. In their enactment and administration of the law, they may not extend favors of any sort to any individual or class of individuals. The common good must be preferred to the good of individuals, and all individuals must be treated with exact justice.

Public officials are not only bound to refrain from promoting the interests of individuals at the expense of the common good, and to avoid favoritism toward certain individuals, but also to extend rigorous and proportionate justice to all social classes. This means that no class should be favored to the detriment of the general welfare, and that no class should receive less than its due proportion of public protection and assistance. For example, it is wrong to permit an industrial group to exploit the national resources, such as coal mines and timber, in such a way that present or future generations will suffer unnecessary hardship. It is wrong to give certain industrial interests the benefit of a public subsidy or a protective tariff, the effect of which is to impose extortionate costs upon the great body of the consumers. The possession of unregulated monopoly power is likewise a cause of injury to the public welfare which will not be tolerated by public officials who habitually fulfill their public obligations.

On the other hand, every social class has a just claim against the State and its officials for that measure of governmental protection and assistance which is necessary to provide the conditions of right and reasonable life. Today this principle receives its chief application in the weaker economic classes. As Pope Leo XIII observed: "The richer classes have many ways of shielding themselves, and stand less in need of help from the State; whereas, those who are badly off have no resources of their own to fall back upon, and must chiefly depend upon the assistance of the State. And it is for this reason that wage earners, who are undoubtedly among the weak and necessitous, should be specially cared for and protected by the government."[2]

[2] Encyclical, *On the Condition of Labor.*

Therefore, legislators are morally bound to provide for minimum decent standards of life and labor. This means legislation to prevent child labor, an excessively long working day, oppressive conditions in work places, unduly low wages, and the subjection of the workers to an inhumane insecurity as regards unemployment, sickness, accidents, invalidity, and old age. Public officials are likewise under obligation to promote in due measure the prosperity of industrial enterprise, to levy taxes in proportion to ability and sacrifice, and in general to deal with all classes according to their actual needs and deserts, not according to some doctrinaire theory of *laissez-faire* or of opposition to class legislation. In the words of Pope Leo XIII: "Among the many and grave duties of rulers who would do their best for the people, the first and chief is to act with strict justice—with that justice which is called by the schoolmen *distributive*—towards each and every class alike."[3]

One of the primary duties of public officials is to possess an adequate knowledge of what constitutes the common welfare, and of the means by which it is best promoted. This obligation is disregarded by a large proportion of those who seek public office. Men who are otherwise conscientious assume that good will and right motives are a sufficient equipment for public service. When we consider the enormously extended functions of the modern State, the numerous and profound ways in which its activities affect the welfare of all the people, and the consequent complexity of legislating and governing wisely, we see that this notion is utterly mistaken. Only in local governments and subordinate official positions is it true that common honesty plus common sense suffice for those who are charged with the duty of caring for the public welfare. In all the more important legislative and executive officers, a considerable amount of special and specific knowledge is essential to an adequate discharge of official obligations.

So much for the nature and elements of the obligation resting upon public officials. The scope of their obligation is identical with the province of the State. This has been described in preceding chapters on the State's end and functions. All of these

[3] Encyclical, *On the Condition of Labor.*

functions, intellectual, moral, religious, political, civic, and economic, public officials are morally bound to perform in accordance with the principles of strict justice and proportionate justice.

The statement is frequently made in the United States that public officials are merely public servants. It is incorrect. They are, indeed, the servants of the people, but they are also something more. Inasmuch as their function is that of public service, they may properly be regarded as public servants; inasmuch as their position gives them the authority to enact laws which are morally binding on the people, they are not servants but masters. Their character as public servants does not depend upon the fact that they are elected by the people; for hereditary kings are likewise bound to serve the common welfare. In a republic the members of legislatures may in a special sense be regarded as servants of the people, whenever they are instructed by the electors to carry out certain political policies. Their promise to pursue this course creates a particular responsibility to the people, and renders their position analogous to that of servants or agents. Nevertheless, they are masters and rulers when they enact the legislation necessary to carry out the policies to which they have committed themselves.

The first duty of the citizen is obedience to law. It extends to the ordinances of every jurisdiction in which the citizen finds himself, national, State, and municipal. The basis, nature, and limits of this duty have been described in the preceding chapter.

A second duty is that of respect for public authority, and this means both public officials and their enactments. Of course, this duty can be exaggerated, but in our day and country the opposite perversion is much more frequent. Through false inferences drawn from the principles of democracy, men are inclined to minimize, or even to reject entirely, this obligation. Conscious that elected officials are human beings of the same clay as himself, and dependent upon him for an elevation that it only temporary, the citizen easily assumes that to show them respect is undemocratic and unworthy. The *Century Dictionary* defines respect as, "the feeling of esteem, regard, or consideration excited by the contemplation of personal worth, dignity, or

power; also a similar feeling excited by corresponding attributes in things." While public officials are sometimes lacking in personal worth and dignity, they are always the possessors and custodians of political power, which of its nature demands esteem and consideration. Were this attitude habitually taken by the citizens, the problem of securing law observance, would be greatly simplified. The man who refuses respect to civil authority because he fears that it would demean or degrade him, exhibits the slave mind and temper; for he has not sufficient confidence in his own worth to feel that he can afford to give honor where honor is due, or to recognize any kind of superiority. Such a man is not only a bad citizen but a detriment to any social group.

Closely connected with obedience is the duty of loyalty. In essence loyalty means faithfulness and constancy in allegiance and service. To the idea of obedience, which may be quite formal, mechanical, and even reluctant, it adds the notions of intensity, emotion, spontaneity, and constancy. The genuinely loyal citizen is always ready and eager, not only to obey the laws, but to support and maintain the political institutions of his country. If the citizen merely refrains from seditious or treasonable conduct his loyalty is negative and imperfect. Whether positive or negative, loyalty always implies a certain habitual spirit and attitude toward laws and institutions. It habitually recognizes that a presumption exists in favor of organic and statutory enactments and principles. The loyal citizen is always disposed to give his government and his political institutions "the benefit of the doubt," and to withhold obedience or support only when the doubt is converted into moral certainty that the laws or the government are in the wrong. In a word, the habitual attitude of the loyal citizen is that of sympathetic faith, not that of criticality and distrust.

The participation of the United States in the great war made the subject of loyalty lively and very practical. As might have been expected, the discussion gave ignorant, prejudiced, and selfish men the opportunity to exploit perverted notions of loyalty. During and since the war, various groups and organizations endeavored with considerable success to fasten the stigma

of disloyalty upon many of their fellow citizens who were guilty of neither treason nor sedition. The conception of loyalty to the Constitution became perverted into the doctrine that any attempt to change the Constitution, even by legitimate means, is disloyal. Not only the method but the scope of loyalty was distorted. The demand was impudently and blatantly made that all citizens should show loyalty not only to our political and legal institutions, but also to our industrial institutions, specifically to the existing positions and relations of capital and labor. Any theory or movement which aimed at essentially modifying the industrial system or diminishing the power of capital, whether through Socialism, Guildism, or co-operative enterprise, was denounced as seditious and un-American. It is significant that both these forms of exaggeration were, in the main, committed by the same persons. They denounced any effort to change the Constitution because they dislike changes which would facilitate industrial reforms and social justice; they strove to place industrial institutions on the same plane of authority as political institutions because they wished to perpetuate economic injustice. In short, the perversions and exaggerations of the notion and duty of loyalty were mainly determined by sordid economic motives.

These corruptions of a noble sentiment and doctrine do not merit a formal refutation. Loyalty to political institutions does not exclude the desire or the effort to modify or even to abolish them by orderly and reasonable processes. Loyalty to the State, to one's country, to the public weal, does not include belief in, love of, or defence of existing private institutions, industrial or other. The loyalty which is incumbent upon the citizen, as citizen, concerns only political institutions and relations. The organized attempt to make it apply to the economic order, is one of the most extraordinary and brazen performances in the history of human selfishness. It was possible only in the vitiated atmosphere of war, and in the abnormal psychology of the years immediately following.

In his excellent brochure on *Christian Citizenship*, the Rev. Thomas Wright declares that obedience, respect, and loyalty are

the constituent elements of patriotism.[4] Probably this is as satisfactory as any other analysis of the vague, though apparently elementary, sentiment that we call patriotism. The good citizen loves to be acclaimed a patriot, and the orator finds patriotism one of the most appealing and popular subjects. Nevertheless, it is very elusive. To the average man it means love of country, but what does love of country mean? Not merely love of green fields, lofty mountains, and winding rivers; not always love of existing political institutions. In time of actual or threatened war, the idea of patriotism is very simple. It means support and defence of one's country against armed attack.

In time of peace, the phrase, "love of country," means many things to many minds. The object of the love may be the physical characteristics of the country, or its economic and social opportunities, or its government, or its political ideals, or its history, or some combination of these entities. As commonly used, the term patriotism has almost always an international connotation. It appeals to the national consciousness. It brings before the mind the facts of national individuality, separateness, distinctness of interests. It lays stress upon the welfare of one's own country against the welfare of other countries. Too often it takes the form of boasting, jingoism, contempt of foreign nations, and identifies the national welfare with national power, imperialism, and agression. The average citizen frequently confuses patriotism with national jealousy and provincialism. He does not regularly think of it as having anything to do with internal affairs.

Adequate and rational patriotism should be quite as active in peace as in war, and it should extend to every matter that affects the common good. If patriotism is love of country its only rational and concrete meaning is love of the people who inhabit the country and compose the State, in other words, love of one's fellow citizens. Therefore, its ultimate object is the same as that of the State, namely, the common good. In time of peace the common good is much more dependent upon domestic legis-

[4] P. 61. The subject of patriotism is presented from two different viewpoints by Archbishop Ireland and Archbishop Spalding in the productions reprinted in this volume.

lation and administration than upon foreign policies. The true patriot realizes this and strives to promote the common good in all his political activities. The man who participates in political corruption, or uses his political position or influence for the undue advantage of any social group or for the oppression of any social class, is not a patriot, no matter how loudly he may acclaim the glories of his country, or how truculently he may proclaim his willingness to fight foreigners.

Taking up now the more specific duties of the citizen, we find that they may be conveniently grouped under two heads: Those which are elementary and which exist under all forms of government; those which are complex and have place only in a State that possesses representative institutions. The most important of the specific elementary duties are concerned with taxation and military service.

According to Catholic teaching, statutes imposing taxes bind in conscience. The general reason is the same as that which attaches moral obligation to other civil laws. That is the common welfare. Since government cannot maintain itself nor perform its functions without revenues, and since it has no other means of obtaining them than taxation, the citizens are morally bound to provide the necessary revenues in this manner. Moreover, the obligation is not merely one of legal justice, that justice which requires citizens to promote the common good, but also of strict justice, that justice which requires restitution to be made when it is violated.[5] If the citizens fail to pay taxes they sometimes inflict injury upon the State, injury which can be measured in terms of money and repaired by payments of money. When the evasion does not produce such injury, owing to the fact that the authorities increase the tax *rate*, or devise other and more effective forms of taxation, the obligation of making restitution will have a different object. The real beneficiaries of restitution will then be those citizens who have acted conscientiously and paid the full measure of taxes levied upon them.

Let us suppose that a tax rate of one and one-half per cent will yield sufficient revenue for a city if all the citizens contribute their proportionate share. Through various devices very many

[5] Cf. Bouquillon, *Theologia Moralis Fundamentalis*, pp. 460-463.

of them evade a considerable part of their obligation. In so far as the deficit is not made up through an increase in the tax rate, an injury is done the public welfare. If the rate is raised sufficiently to bring in all the necessary revenues, the conscientious taxpayers contribute more than their proper share, and, therefore, suffer injustice at the hands of the dishonest. If the evasions are so great as to require that the rate be raised to two per cent, it means that the honest citizens are paying one-third more than their fair quota. They pay one-third more than they would have to pay if all were as honest as they. The injustice done them by the evasive action of their fellow citizens is obvious. Hence follows the obligation of restitution.

These are the general principles. Their application, however, is not entirely simple, owing to the complexity and injustice of our tax system, and the very large proportion of persons who habitually understate their taxable property. The principal form of taxation, at least in local and State jurisdictions, is what is known as the general property tax. Not only does this directly violate the ethical principle of taxation in proportion to ability to pay, as determined by comparative sacrifices, but it is apportioned and administered most inequitably, and it is evaded in wholesale fashion. In the words of Professor Seligman, "the general property tax, as actually administered, is beyond doubt one of the worst taxes known in the civilized world."[6] In these circumstances, the conscientious citizen cannot be required to do more than pay that proportion of the full amount which is paid by the majority. If the prevailing understatement of taxable property amounts to twenty-five per cent, the citizen who pays on more than three-fourths of his goods contributes more than his share.[7] The general rule of action may properly be applied to other kinds of taxes where evasion is considerable and notorious. Of course, the conscientious citizen will not take advantage of it until he is morally certain of the facts.

It is sometimes asserted that certain tax laws are purely penal, obliging the citizen only to submit to the penalty in case his

[6] *Essays in Taxation*, p. 61.
[7] Cf. Tanquerey, *De Justitia*, no. 597.

evasion is detected. From the discussion in the last chapter, it seems fairly clear that this theory must be applied with great caution, and that the tax laws which fall under it are exceptional. Tariff duties are the taxes most commonly adduced. Probably the laws prescribing these are purely penal, not only because of the common popular conviction, but because they are saturated with economic and ethical inequalities.

As a rule, the citizen is not bound to pay taxes until the amount due from him has been defined by the fiscal authorities. When he is legally required to furnish a statement of his property, he is obliged by legal justice to comply. Is he obliged to volunteer such information? For example, is a person morally bound to inform the authorities that his income is sufficiently large to subject him to the income tax? If he does not give this spontaneous information he will escape. The income tax law requires the citizens to make such a statement, and penalizes them for failure to do so when their evasion of the tax has been detected. It seems clear, therefore, that the citizen is bound by legal justice to provide a statement of his taxable property, not only in response to an official requisition, but sometimes in the absence of such a requisition.

Another elementary obligation of the citizen is that of military service, when required by a law of conscription. The object of such a law is of the greatest importance to the public weal. As a rule, the obligation is gravely binding in conscience. Hence all fraudulent methods of escaping its operation are a violation of legal justice.

The second class of duties incumbent on the citizen results from his electoral functions. In a republic, legislation and administration depend finally upon the intelligence and morality of the voters. They have it in their power to make the government a good one or a bad one. Whether the common good will be promoted or injured, depends upon the kind of laws enacted and the manner in which they are administered; but the character of the laws and the administration is primarily determined by the way in which the citizens discharge their function of choosing legislators and administrators. Therefore, this func-

tion is of the gravest importance and the obligation which it imposes is likewise grave.

It must be admitted that the importance and gravity of this obligation is frequently ignored by Catholics, as well as by other citizens. Writing of Great Britain, the Rev. Thomas Wright declares: "There are large numbers of Catholics in this land with but little appreciation of the strong interrelation which exists between true citizenship and Christianity. . . . Many excuses, it must be owned, may be alleged in extenuation of the apathy of Catholics toward their civic obligations in these lands. Time, however, has undermined the substance of these apologetic pleas. Catholics are now able to appeal to no sufficient cause why they should stand aloof from public affairs, or why, participating in them, they need indiscriminately follow the policies of parties without thought or test of their moral justification."[8]

These observations may be applied in full measure to the Catholics of the United States. Like their coreligionists of Great Britain, they can show historical conditions to extenuate, if not to justify, their neglect of political obligations. Very many, if not the majority, of them are persons, or the descendants of persons, who came from countries whose governments treated Catholics unfairly and allowed them very little participation in public affairs. As a consequence, a large proportion of American Catholics have been, until quite recently, possessed of what has been happily characterized as "the psychology of persecution." They have looked upon government with a certain measure of distrust, and, therefore, have been predisposed to ignore or to minimize their electoral responsibility. Many of them have easily and complacently accepted the cynical judgment that "politics is a rotten business," and have either held aloof or permitted their political influence to be utilized by special and unworthy interests.

The Catholic teaching on the duty of exercising the voting franchise, as stated in the authoritative manuals of moral theology, may be summed up as follows:[9]

[8] *Christian Citizenship*, pp. 17, 18.

[9] Cf. Tanquerey, *De Justitia*, pp. 475-477; Noldin, *De Praeceptis*, pp. 336-339.

The obligation of taking part in the election of candidates for civil offices, is an obligation of legal justice. The citizens are bound to promote the common good in all reasonable ways. The franchise enables them to further or to hinder the common weal greatly and fundamentally, inasmuch as the quality of the government depends upon the kind of officials they elect. Not only questions of politics, but social, industrial, educational, moral and religious subjects are regulated by legislative bodies and administered by executives. Therefore, the matter is of grave importance, and the obligation of the citizen to participate in the election and to support fit candidates is correspondingly grave. According to Tanquerey, the elector cannot free himself from this obligation by any slight cause or reason, such as, going hunting, or criticism by his neighbors. The excusing cause needs to be of a grave nature, such as loss of one's means of livelihood. A slight cause will relieve the citizen from the obligation of voting only when he is morally certain that he cannot affect the immediate result. Even then, he ought to take part in the election to show good example, and to hasten the day when the cause which he supports will command a majority of the voters.[10]

Just as the official is obliged to refrain from promoting the interests of individuals as against the common good, so the elector is morally bound to cast his vote for the common welfare, instead of for the benefit of private persons or groups. This principle is very often forgotten by well-meaning citizens; for example, by giving their political support to a friend, or to a member of their own race or religion, when he has not the required moral or intellectual equipment, or when he is the upholder of socially harmful policies. Too often in such situations the honest citizen salves his conscience with the excuse that the opposing candidate "is just as bad." Were this the fact one might legitimately determine one's choice on the basis of personal friendship, or racial or religious affiliation, or other extrinsic considerations; but the general fact is that voters who adopt this course do not take adequate care to find out whether the candidate of the opposition is in reality "just as bad."

[10] Tanquerey loc. cit.

They too easily decide the question on the basis of their inclinations and predilections.

Closely connected with this unjustifiable practice is that of ignoring *principles* and *policies* in the exercise of the franchise. "Vote for a good man, regardless of party," is a plausible but essentially inadequate political rule. A distinction should be drawn between legislative offices and those which are merely administrative. In choosing a city treasurer or a county auditor, the only pertinent qualifications are honesty, intellectual capacity and technical equipment. There is involved no question of legislative policy. When the office to be filled is that of Governor of a State, President of the United States, member of a State legislature, or congressman, other qualifications are essential in addition to those just mentioned. The "good man" may have some very harmful views concerning political and industrial policies. He may sincerely favor national imperialism and jingoism, or legislation to promote the undue aggrandizement of one social class or the oppression of another social class. Obviously the citizen does not fulfil his duty of promoting the common good when he votes for a "good man" of this sort. Sometimes the common welfare will suffer less through the election of a man whose political policies are right but whose moral or intellectual equipment is deficient, than through the elevation of a "good man" who gives his adhesion to wrong policies.

It is sometimes said that the good man in other relations of life is always the best kind of a citizen. This statement is only a half truth. The unqualified propagation and acceptance of it is a serious obstacle to the improvement of citizenship. Fidelity to one's duties as husband, father, son, brother, neighbor, employer, employee, buyer, seller, debtor, creditor, professional man, and client,—does, indeed, contribute very greatly toward the common welfare. Actions performed under the direction of the domestic and social virtues necessarily promote individual and social happiness, just as the opposite actions are an injury to the commonwealth. Nevertheless, these virtues are not a complete equipment for all the duties of citizenship. They do not of themselves provide the citizen with that specific knowledge which he requires as a voter, nor with that civic consciousness

which is essential to good citizenship. Just as an honest employer may treat his employees unjustly because he is unacquainted with those moral principles which apply specifically to industrial relations, or because he has an insufficient knowledge of the living conditions and needs of the workers, so the virtuous citizen may fail in his duties to the State because he does not realize the importance of this particular responsibility, or because he lacks the specific political knowledge which would enable him to exercise his suffrage for the best interests of the commonwealth. In this category are the man who does not realize how fundamentally good government depends upon the electors, the man who lazily assumes that politics is necessarily corrupt, and the man who thinks it sufficient to vote for good men, without any reference to the helpfulness or harmfulness of their political principles and policies.

In a word, the good man is not a good citizen unless he possesses the specific knowledge essential to good citizenship. This comprises adequate perception of the citizen's power and responsibility, and a reasonable degree of acquaintance with political institutions, personages, and policies. The good citizen recognizes all these obligations and makes reasonable and continuous efforts to fulfil them. Such a man, and only such a man, possesses an adequate civic consciousness.

Worth quoting are the following extracts from a letter addressed to his people, in the year 1921, by the late Cardinal Amette, Archbishop of Paris:

"In the joint letter which they recently addressed to the French Catholics, the bishops of France said: 'It is a duty of conscience for all citizens honored with the right of suffrage to vote honestly and wisely with the sole aim of benefiting the country. The citizen is subject to the divine law as is the Christian. Of our votes, as of all our actions, God will demand an account. The duty of voting is so much the more binding upon conscience because on its good or evil exercise depend the gravest interests of the country and of religion.'

"It is your duty to vote. To neglect to do so would be a culpable abdication of duty on your part. It is your duty to

vote *honestly;* that is to say, for men worthy of your esteem and trust. It is your duty to vote *wisely;* that is to say, in such a way as not to waste your votes. It would be better to cast them for candidates who, although not giving complete satisfaction to all our legitimate demands, would lead us to expect from them a line of conduct useful to the country, rather than to keep your votes for others whose program would indeed be more perfect, but whose almost certain defeat might open the door to the enemies of religion and of the social order."

Tanquerey points out that, in order to be able to vote rightly and intelligently, in order to possess the specific knowledge requisite for this purpose, upright citizens should organize and participate in political associations.[11] This is obvious. Men unite in trade unions, manufacturers' associations, chambers of commerce, and professional societies of various kinds for the promotion of their economic interests. Hundreds of thousands of good men, thus occupationally organized, fail to see the necessity of organizing politically for the protection of their civic interests and the effective performance of their duties to the commonwealth. The conduct of political organizations they leave to professional politicans who are usually in the service of selfish private interests. When the inactive citizens see the evil results of this arrangement, they attempt to justify their aloofness by the reflection that politics is essentially corrupt. This lazy pessimism is not warranted by anything inherent in political affairs. It represents a vain attempt to evade moral responsibility. If politics is rotten, a large part of the responsibility rests upon well meaning but indolent citizens.

In view of the fundamental and immense importance to the State of the voting function, and since the electors are in a practical sense the primary political authority, it would seem that the electoral duties of the citizens are not merely duties of legal justice. It would seem that, like the obligations of public officials they also fall under the head of strict or commutative justice. A group of legislators inflict injury upon the community by a bad law, thereby violating strict justice: Are not

[11] Loc. cit.

the citizens who elected them guilty of the same kind of injustice, in so far as they foresaw this possibility? The difference between their offence and that of the legislators seems to be one of degree, not one of kind.

Among the electoral duties of the citizen is that of becoming a candidate for public office in some circumstances. Of course, this applies only to that small minority who are competent. In certain situations, says Noldin, an upright Catholic is bound by a grave obligation to become a candidate for an administrative or legislative office; that is, when his election is certain, when he is able to avert grave evils from the community, when he can accept the office without grave inconvenience to himself, and when no other equally competent candidate is available.[12] In as much as the issues involved in such a situation are of much graver consequence than those dependent upon the ballot of the private citizen, the man who refuses to become a candidate for office will need a much graver reason to excuse him than will the citizen who merely neglects to vote.

[12] Loc. cit.

14. THE RIGHTS OF THE CITIZEN

By Rev. John A. Ryan, D.D.

The citizen possesses two distinct classes of rights. One of these belongs to him as a human being, the other as a member of the State. Rights of the first class are called natural, those of the second class civil. The distinction between the two depends, not so much upon their nature, as upon their source. Natural rights are those which are derived from the individual's nature, needs, and destiny. They are those moral prerogatives which the individual needs in order to live a reasonable life, and attain the end appointed for him by God. Civil rights are conferred by the State for the promotion of the common good, and for the welfare of the individual citizen.

Probably a majority of the writers on political science, as well as the greater part of non-Catholic authorities in economics and sociology, reject the doctrine of natural rights. In their opinion, all rights are derived from the State. Hence the citizen possesses only civil rights. It is not necessary in this place to set down a formal refutation of this theory. It will be sufficient to point out that the theory inverts the position of the State relatively to the individual. According to its logic, the individual exists for the State. Against the State he has no moral rights, but only those immunities and guarantees which the State itself is willing to grant. Consequently, the State may, if it chooses, deprive the citizen of all rights whatever, may arbitrarily take away his liberty and his property, and even put him to death. According to the Catholic doctrine, the State exists ultimately for the individual, and the individual is endowed with certain natural rights which belong to him because of his nature, because he is a person, and because of his intrinsic sacredness.

As the State does not create or confer these rights, it cannot take them away.

This doctrine is not only Catholic, but it is a part of the traditional American political theory, and it is specifically included in the Declaration of Independence. The second paragraph of that immortal document begins thus: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain inalienable rights, that among these are life, liberty, and the pursuit of happiness." Although the last clause of this statement is not an explicit enumeration of all man's natural rights, it does embrace them all implicitly. Life and liberty cover a very large part of the field of natural rights; the pursuit of happiness implies the rights of marriage and of property, which embrace the remainder of that field. Man's natural rights may, therefore, be summarized as those of life, liberty, marriage, and property. Liberty is, of course, a wide conception extending to physical movement, education, religion, speech and writing. Under the head of life is included immunity from all forms of arbitrary physical assault. All these rights belong to the citizen as a human being because they are all necessary for his existence, for the development of his personality, for reasonable human living, and for the attainment of the end which God commands him to attain. In the United States they are all likewise rights of the citizen as citizen. In other words, they are civil as well as natural rights.

A systematic exposition and defence of these several rights is not necessary in this chapter. Most of them have been sufficiently treated in earlier sections of this volume. The right to life is intrinsic; is an end in itself, being directly based upon the sacredness of personality. The right to the various forms of liberty is a means to the end of right and reasonable living. It does not include the right to do or say unreasonable things. Like all other rights which are means, it is limited by the ends which it is designed to promote. The right to marry is directly necessary for the welfare of the individual. Even though a person does not need to marry and can secure his welfare better as a celibate, he has, nevertheless, the right to determine for

himself whether or not he shall marry. The State has no right to decide this question for him. Property in those kinds of goods which meet man's immediate wants, such as food, clothing, and shelter, is directly necessary for individual welfare; therefore, the individual has a natural right to acquire them as his own. Property in goods which have a more remote relation to individual needs, such as, land, machinery, and the instruments of production generally, is not directly and immediately necessary for the individual; but the *institution* of private property in such goods is essential to human welfare, inasmuch as no other arrangement is adequate. All the foregoing natural rights belong to the individual as such, and consequently are valid against the State.

The rights of the American citizen, as such, are set forth in the Constitution of the United States, and in the constitutions of the various commonwealths. They are substantially the same in all these documents. The first amendment to the Constitution of the United States reads thus:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

While the language of this amendment seems to guarantee unlimited freedom of speech and of the press, it has never been so interpreted by the lawmakers or the courts. Rather has it been construed as that reasonable degree of liberty of speech and writing which had prevailed in the American colonies and in England for generations. During the recent war, therefore, Congress and many State legislatures enacted laws forbidding men to speak or write anything tending to hinder effective prosecution of the war. These laws were enacted under the authority of the war making and war legislating powers contained in Section 8 of Article 1 of the Constitution of the United States.

That form of liberty which consists in immunity from invasion of one's home is secured in the fourth amendment to the national Constitution:

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath of affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

This means that no private individual, nor any officer of the law, may enter a man's house without permission, unless a formal warrant has been obtained from court. Overzealous or malicious officers may not enter a house against the wish of the occupier on mere suspicion.

Security against unjust or abitrary prosecution by officers of the law is guaranteed in the sixth amendment:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence."

This civil right is of the highest importance. Its principal effects are to protect the citizen against a prison sentence until he has had a fair trial; to assure him a trial as soon as possible after his arrest; to allow him witnesses on his behalf, and the assistance of a lawyer; to give him liberty on bail until his trial begins, unless the crime with which he is charged is very serious; and to enable him to appeal to the higher courts against an unfavorable sentence. To be sure, these guarantees are occasionally disregarded by the officials, but the number of such violations of civil right is not large. They become considerable only in time of war, or in a period immediately following war, when the calm judgment of the law officers is disturbed by fear or some other passion.

One of the most important individual guarantees is contained in the fifth amendment to the Constitution, which declares that no person shall be "deprived of life, liberty, or property, without due process of law; nor shall private property be taken for

public use without just compensation." The phrase "due process of law" has, in the course of time, acquired a very wide and rather indefinite comprehension, but its elementary and traditional meaning is fairly definite. At the least, it means that a man's life, or liberty, or property may not be taken from him without a regular trial.

It should be noted that the foregoing amendments and provisions are binding only upon the Congress of the United States. With the exception of the prohibition against depriving the citizen of life, liberty, and property without due process of law, all these individual guarantees could be disregarded by the several states. For example, if the State of Georgia were to pass a law forbidding Catholics to assemble publicly for purposes of worship, or denying trial by jury to any of its citizens, it would not violate any of these provisions of the Constitution of the United States. The prohibitions contained in these provisions are addressed to Congress, not to the several States. Nevertheless, practically all, if not literally all, of the State constitutions contain similar guarantees of individual rights and similar prohibitions to their respective legislatures regarding interference with these rights.

The provision of the fifth amendment forbidding Congress to deprive the citizen of life, liberty, and property, without due process of law, is repeated in the fourteenth amendment, and is there addressed to the States. In the latter amendment the guarantee reads as follows:

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Such are the principal civil rights conferred upon and assured to the citizen by the organic laws of our country. They include all the liberty that anyone can reasonably claim, whether as a human being, or as a citizen. Inasmuch as they are matters of constitutional rather than statute law, they cannot be abolished through a temporary whim of the electors or by a simple act of the national or state legislatures. They can be

repealed only by amending the constitutions, which is always a sufficiently slow process to give time for the better judgment of men to reassert itself.

The political rights of the citizen are sometimes distinguished from his civil rights. The most important difference between them is that the former are intended primarily for a public purpose, while the latter have as their immediate end the welfare of the individual. The chief political rights of the citizen are those of voting and holding office. According to the fifteenth amendment to the National Constitution, the right to vote "shall not be denied or abridged by the United States, or by any State, on account of race, color, or previous condition of servitude." It is true that this right has been denied to colored voters in several of the states, through various devices evading the fifteenth amendment. However, it should be noted that these evasions do not amount to a violation of the *natural* rights of the negro. The elective franchise is not among the natural rights of the individual. It is created by the State for a civil purpose. Inasmuch as this purpose might conceivably be fulfilled, and in several States has been fulfilled, with the suffrage restricted to males and even to certain classes of males, it is clear that the power to vote is not a natural right inherent in every individual. It is a political privilege.

15. CATHOLICISM AND AMERICANISM.[1]

By Most Rev. John Ireland, D.D.

My religious faith is that of the Catholic Church—Catholicism, integral and unalloyed—Catholicism, unswerving and soul swaying—the Catholicism, if I am to put it into more positive and concrete form, taught by the supreme chieftain of the Catholic Church, the Bishop, the Pope of Rome.

My civil and political faith is that of the Republic of the United States of America—Americanism, purest and brightest; yielding in strength and loyalty to the Americanism of none other American; surpassed in spirit of obedience and sacrifice by that of none other citizen, none other soldier; sworn to uphold in peace and in war America's Star Spangled Banner.

Between my religious faith and my civil and political faith, between my creed and my country, it has been said, there is discord and contradiction, so that I must smother something of the one when I bid the other burst forth into ardent burning, that I must subtract something from my allegiance to the one when I bend my full energy to service to the other. Those who so speak misunderstand either my creed or my country; they belie either the one or the other. The accord of one with the other is the theme of the address I am privileged this evening to make.

No room is there for discord or contradiction. Church and State cover separate and distinct zones of thought and action: The Church busies itself with the spiritual, the State with the temporal. The Church and the State are built for different purposes, the Church for Heaven, the State for earth. The

[1] Address delivered at Milwaukee, Wis., on Aug. 11, 1913, at the mass meeting incidental to the Twelfth Annual National Convention of the Federation of American Catholic Societies.

line of demarcation between the two jurisdictions was traced by the unerring finger of Him who is the master of both. The law of God is—"Render to Cæsar the things that are Cæsar's; and to God the things that are God's."

I rehearse a vital dogma of Catholic faith with regard to the mutual relations of Church and State—the solemn teaching of a sovereign Pontiff, Leo XIII. The Pontiff writes: "God has divided the government of the human race between two principalities, the ecclesiastical and the civil; the one being set over the divine, the other over human things. Each is supreme in its own sphere; each has fixed limits, within which it moves. Each is circumscribed to its own orbit, within which it lives and works in its own native right." Things civil and political are subject, as reason and equity demand, to the civil authority, Jesus Christ Himself having commanded that the things of Cæsar be given to Cæsar, as the things of God are given to God. Language could not be plainer, more emphatic, more authoritative with regard to the rights of the civil power, its independence within its proper zone of action. The position of the Catholic Church, consequently of Catholics, toward the nation or State, is defined in clearest terms by the highest authority of the Church.

What is to be feared from the Catholic Church? To priest, to bishop, or to Pope, who—I am willing to consider the hypothesis—should attempt to rule in matters civil and political, to influence the citizen beyond the range of their own orbit of jurisdiction—that of the things of God, the answer is quickly made: "Back to your own sphere of rights and duties—back to the things of God!" Or, in like manner, should the State, or its officials, in law or in act, step beyond the frontier of temporal jurisdiction and dare lay hands upon the things spiritual and divine the answer is: "Beware, touch not the things which God has reserved to His duly appointed representatives in the spiritual order."

A recent proclamation from an anti-Catholic association in America reads: "We hold that no citizen is a true patriot who owes superior temporal allegiance to any power above that of his obedience to the principles of the Constitution of the United

States." The shaft is directed against a supposed tenet of the Catholic Church; it pierces the vacant air; it is a missive of pitiable ignorance.

Is the issue that of the temporal sovereignty exercised for ages in a part of Italy by the Roman Pontiffs, still claimed by their successor as an international right? But in the States of the Church the Pontiff was king as well as Pontiff. To his own kingdom his temporal rule was strictly limited. Beyond the frontier of his own States he claimed no civil or political power; none was allowed him by the most Catholic of nations, by the most loyal of Catholic believers.

Is the issue that of happenings in ages when bishops and popes, the sole visible tenants of authority able to wrest tribes and peoples from chaos and anarchy, were compelled by social needs and popular appeals to sit as civil lawmakers and judges —when the crozier and the tiara were the sole arms to stem the onslaught of imperial and regal despotism, and peoples in despair cried to them for mercy and help—or in ages when Christendom was of one creed in faith and morals, and special gifts of power were made to the Papacy, willed by all as an international arbitrator and peacemaker—when special opportunities for beneficent intermingling of the spiritual and the temporal in the life of nations were created for the Papacy, to which it was bound to give heed, under penalty of betraying the behests of charity and of justice, and turning back from the face of the earth the upwelling stream of culture and civilization?

Into past ages I do not now hold the field glass of scrutiny, although, were I to do so, I were readily able to decry glorious work done by the Papacy, and to the wondering eye of a modern world show it to have been ever the guardian of personal and social rights, ever the foster mother of popular liberty and popular justice, ever the resplendent mirror of Him of whom it was written: "He passed by, doing good." My contention is, when and where, as in America, a new social order has arisen, within which the State or the nation wills to live of its native life and rights, the Church, freed from burdens imposed upon it by social phases of other times and other places, willingly

betakes itself to the folds of its own mantle, to the circle of its own spiritual orbit, saying with its founder and master: "To Cæsar the things that are Cæsar's, to God the things that are God's."

And now, in America, some do say, that the Pope of Rome is ambitious of temporal rule over America, of planting here the "Yellow and White" instead of the Star Spangled Banner; that priests and bishops are active agents of his yearnings; that Catholics dream of the day when his command in civil and political matters will sway the White House and Capitol; that for this intent associations are nightly befitting themselves by sanguinary oath and secret drillings, to murder their fellow-citizens and in the name of a foreign potentate take forcible possession of the land of the brave and the home of the free! I allude to such wild elucubrations of diseased brains only to ask, in unanswered wonderment, how such follies can be thought out and acted upon, even by a handful of men, in the twentieth century, in America? But, of course, the insane are ever with us, and all the insane are not put into safe keeping.

The partition of jurisdiction into the spiritual and the temporal is a principle of Catholicism; no less is it a principle of Americanism. Catholicism and Americanism are in complete agreement.

The Constitution of the United States reads: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." It was a great forward leap on the part of the new nation towards personal liberty and the consecration of the rights of conscience. Not so had it heretofore been on the soil of America. Save in Maryland while reigned there the spirit of the Catholic Lord Baltimore, and in Pennsylvania under the sweet-tempered rule of William Penn, religious freedom was barred by law in the Colonies,—Protestant creeds warring one with the other, all warring with the Catholic. But it was decreed that the new flag must be unsullied by religious persecution, the new nation must be, on every score, the daughter of freedom, the guardian angel of personal rights in each and every American.

The proclamation of the Constitution was as the Milanese

edict of Emperor Constantine. Before the time of Constantine all things, even the things of God, were Cæsar's. The State made and unmade divinities; it was itself a divinity, its highest representative, the Emperor, claimed place among the Olympians, and incense was burned before his statue as before that of a god. The personal conscience was allowed no recognition. The subject must worship as Cæsar ordered. It was servitude most absolute. But at last the conqueror of the Milvian bridge spoke; liberty triumped in the triumph of the Labarum. "We have determined, with sound and upright purpose," said Constantine, "that liberty is to be denied to no one . . . that to each one freedom is to be given to devote his mind to that religion which he may think adapted to himself." Conscience was made free in the Roman Empire by the Milanese edict; it was made free in America by the Federal Constitution. In the one and in the other, it is the injunction of the Master: "To Cæsar the things that are Cæsar's; to God the things that are God's."

By the terms of the Federal Constitution as by the teachings of the Catholic Church, no room is given in America for discord between Catholicism and Americanism, between my Catholic faith and my civic and political allegiance.

America is a Republic; the spirit, the form of government is democracy—the government of the people, by the people, for the people. Is there not here, it is asked, at least a touch of conflict between my religious faith and my civic and political faith? I tread upon easy ground, so plain are the teachings of the Catholic Church in favor of the rights of the people in matters of civic and political government. I again quote from the encyclical letters of Leo XIII. The Pontiff writes: "There is no power but from God. The right of command, however, is not in itself linked to any one form of government. One or the other form the commonwealth may rightfully give to itself, provided such be really promotive of the common welfare . . . No reason is there why the Church should prefer one form of government to another, provided the form that is chosen be just in itself and favorable to the common good. Therefore, the rules of justice being duly observed, the people are free to

adopt that form of government which befits their temper, or best accords with their traditions and customs." America declared itself a Republic; its government is organized democracy. In America, according to the teachings of the Catholic Church, the republic is the sole legitimate government; to the republic Catholics are in conscience obliged to yield sincere and unswerving obedience.

God is the source and the giver of all power; of themselves men have no authority over other men. The authority of the parent over the child is from God, who created nature and so created the family; the authority of the State is from God, who willed that men should live within the fostering embrace of a social organism. In this sense, but in none other, a government, whatever the form, rules by divine right. God gives the power, but the people choose those that hold it, and mark out the conditions under which they do hold it. This is supreme democracy; it is the dogma of Catholicism.

In America the government is the Republic—the government of the people, by the people, for the people. With you, fellow Catholics with you, fellow Americans, I salute the Republic. I thank God that the people of America are capable of possessing a government of this form. The Republic—it is the fullest recognition of human dignity and human rights, the fullest grant of personal freedom, that due respect for the rights of others and the welfare of the social organism may allow. Permit the barbarous onslaughts of lawlessness and anarchy to undermine its foundations or loosen the cement binding together its walls! Never, so long as life still throbs within our bosoms, alter it to empire or monarchy! Never, so long as our lips may praise it, or our hands wield arms in its defence.

Would we alter, if we could, the Constitution in regard to its treatment of religion, the principles of Americanism in regard to religious freedom? I answer with an emphatic No. Common sense is ours. Common justice is ours; a regard to our own welfare and safety is also ours. The broad fact is that the American people are divided in matters of religious belief. To the American people, to the whole people, does the country belong. What else, then, could the framers of the

Constitution have done, what else since their time could the legislators of the land have done, in equity towards all, in equity to the country as one nation, to its people as one people, but solemnly decree, as they did, as they continue to do, equal rights to all—rights to all, privileges to none? Necessarily religious freedom is the basic life of America, the cement running through all its walls and battlements, the safeguard of its peace and prosperity. Violate religious freedom against Catholics: Our swords are at once unsheathed. Violate it in favor of Catholics, against non-Catholics: No less readily do they leap from the scabbard.

Does Catholicism in America suffer from religious freedom, allowed equally to Catholics and to non-Catholics? Compare the lot of Catholicism in America to that of Catholicism in so many trans-Atlantic lands, where the tenets of Pagan Cæsarism, as to the supremacy of the State over the conscience of its subjects, do still prevail. There manacles bind hand and limb the bride of Christ: Here she walks, in queenly mien, free and unfettered, putting forth, without let or hindrance, the full exuberance of her native force and beauty, proving at every stepping that her life is all her own, since she lives it without outward help or prop; that her blosson and fruit are all her own, since they spring exclusively from her bosom, and of their own vigor defy triumphantly darkening clouds and battling tempests.

Had the Catholic Church not lived and thriven in freedom, truth were not its armor, grace from Heaven were not the comeliness of its countenance.

They know us little who accuse us of coveting civil and political power, that we may dim the splendor of the fairest flower in the garden of Americanism. Our combats, if combats there be, are never against the liberties of America, but in defense of them; never against Americanism, but against such of its sons whose souls never yet have thrilled in full response to its teachings and inspirations.

The charge is made, if not anti-American, the Catholic Church is un-American—it is in America an alien institution. More definitely the charge is this: The Catholic Church does not

bear the stamp, "Made in America." It is un-American to go across the Atlantic or the Pacific for aught that America uses or needs, even for its religion. Now the head of the Catholic Church is the Bishop of Rome, a foreigner; its general councils, composed of men of all nations are foreigners in the majority; Europeans, Asiatics, Africans, legislate in faith and morals for America. Why not a Pope strictly American? Why not councils, as those of other religious bodies, exclusively made up of Americans—capable, as only Americans may be supposed to be, of interpreting the American mind and guiding the American aspiration?

The late Bishop Doane of Albany once wrote: "It is hard to find any other word (than that of 'alien') which describes the whole communion of a Church which owes its highest allegiance to a single head, who is a foreigner across the sea." A few weeks ago, in the *Yale Review*, the secretary-general of the university while treating of what he is willing to call the helpful influence of the Catholic Church over recently arrived immigrants, complains: "But it [the Catholic Church] links them [the immigrants] with their past rather than with that of the United States. It has been outside the main currents of the Anglo-Saxon progress. Its emphasis is neither on freedom nor on democracy; so unless it proves untrue to its own ideal it will not satisfy the American people." To Bishop Doane, Catholicism is "an alien" in America, objectionable to Americans, because its sovereign Pontiff is not an American, living in America. Anson Phelps is sure that Catholicism, to satisfy Americans, should have been woven in a loom-room even of Anglo-Americanism. In the June number of the *Atlantic Monthly*, a writer heads his article with this caption: "Reasonable Hopes of American Religion," and actually delineates a creed suitable in his judgment to the people of America.

Faith and morals made in America on a design strictly American! Great and good as is America, it must not arrogate to itself the realm of the Almighty God, that of faith and morals. Shall we call the Almighty God a foreigner? Yet He is not exclusively the God of America. Shall we call the Saviour of Calvary a foreigner? Yet He was neither a native nor a natural-

ized American, and His message was: "Teach all nations"—instead of teach only America! And now shall we call the Bishop of Rome a foreigner, "an alien," because he stands before the world the universal teacher, the Vicar of Jesus Christ, teacher of all nations, teacher of the whole human family?

Argue that the Almighty God is not the supreme author and norm of an eternal righteousness, that Jesus Christ is not the proven revealer of the thoughts and the love of the Almighty God, that the Bishop of Rome is not the historic successor of Christ's apostolate—then, counsel, perhaps, an American-made Church for Americans, an American-made code of faith and morals. But religion is not a product of the mind of the individual man, or of the environment within which he lives; it is not a sheer human growth, changeable as the seasons of the year, fitful and capricious as the likes and dislikes of man and of peoples.

Religion is the mind and the will of God, existing as God exists, objectively outside of men and of peoples, superior to all in men, exacting from man the obedience due by the creature to the creator. The question is never—what is it that suits a man, or a people, but what is it that God has imposed upon men by the eternal laws of His supreme righteousness, or by the teachings of His historic revelations? What Americans require is, not an American-made, but a God-made religion. And so, at the bar of American common sense itself, the proposals of the writer of the *Atlantic Monthly* must only be—as he himself despairingly inclines to term them—"dreams that are the shadows of hopes, hopes that are the shadows of dreams."

The Catholic Church is extra-American, supra-national, begotten for all nations, not for America alone; its supreme Pontiff is extra-American, supra-national—a foreigner on no spot of earth's surface, everywhere at home, as the spiritual father of all tribes and of all peoples who seek divine truth from a universal God and a universal Saviour.

And this, the beauty; this, the grandeur of the Catholic Church, that it is Catholic, as the eternal God is Catholic, as the salvation given by Jesus Christ is Catholic. Narrowness, provincialism in religion, in faith and morals, on the first face

of things, is a perversion of God's eternal law, and of the revelation given to men 1,900 years ago. The days of tribal religions are past; they must not be revived in America.

Another charge of un-Americanism—the attitude of the Catholics toward State schools. My answer is quickly at hand. The State takes to itself the task of instructing the children of its people in branches of secular knowledge; in order that this be done the more efficiently and the more generally, the State pays from the public treasury the financial cost of the schools opened under its patronage. Do Catholics make objection to the task or to the financial expenditures it entails?

Convinced they are, as the most zealous supporters of State schools, that no child, whether for its own, or for the sake of the State, should grow up without an adequate share of secular knowledge; and convinced no less are they that it is right and proper on the part of the State to disburse its funds in favor of universal secular instruction. What then our claim? One that we most licitly put forth on behalf of America itself—that this secular instruction be given so that the religious creed of the least of the little ones be not made to suffer; that it be given so that the influences of religion—influences, however much outside the direct grant of the civil power, still vitally necessary to the social life and security of the State itself, as they are to the spiritual life of the souls of its citizens—be not contaminated or nullified. Not against State schools, as such, do I raise objection, but as to the methods in which they work—methods that, whatever the theory, do in fact consecrate secularism as the religion of America, and daily are thither driving America with the floodtide of a Niagara. Somehow, secular knowledge should be imparted to the child so as not to imperil its faith in God and in Christ. Prove to me, I say, that this contention does not fully fit into the Constitution of the United States, that in making it I have not in mind the welfare, the salvation of America—prove this before you denote me as un-American.

A pernicious mistake is made regarding our complaint of the methods by which State schools are conducted. It is, that Catholics are looking exclusively to themselves and to their financial

interests. Not so at all: We look to ourselves; but even more so, we look to the people of America, to the Republic of America. We need not be much concerned for ourselves. We have our Catholic schools; to-morrow we shall have them in greater numbers, where our children receive secular knowledge without peril to faith and morals. Nor do we count the cost of maintaining those schools, in view of the priceless protection they give to faith and morals. But the vast population around us is limited to schools of secularism—and in this way secularism is fast becoming the religion of America. Say what you will, to-day, in America, the evil is the decay of religion, and, in logical sequence, the decay of morals. In both instances the cause of the decay is the enforced secularism of the State schools. Others than Catholics, heedful observers and intelligent thinkers, admit the evil, admit the cause and give the alarm. I trust to the awakening common sense and patriotism of the American people to discover the remedy. Meanwhile in telling of the evil and of the cause, my right hand on my conscience, I rank myself among truest and most loyal Americans.

An axiom of Americanism is "equal rights for all," "fair play," "the square deal," as it has been termed. That, and naught else, is the demand of Catholics in America. Catholics demand their rights—all the rights guaranteel to American citizenship by the letter and the spirit of the Constitution; and for the acquisition and the preservation of those rights they shrink from no means or methods allowed by the Constitution and the laws of the land. Were they to act otherwise, they were the unworthy sons of America. The rights of Catholics are the rights of the personal conscience of the Catholic citizen. It is not the Catholic Church in its official name that comes into issue; it is the American citizen, whose religious faith is the faith of the Catholic Church. Not to know one's rights is low mindedness, not to defend them is cowardice. The true American, differing from us in religion, would despise us if we laid down our arms before bigotry and injustice, and by so doing disgraced the shield of Americanism, ever vowed to justice and to valor.

Do we, however, demand special privileges not accorded to

other citizens of America? No—never—no more than we would allow others special privileges not accorded to ourselves—less even than we would allow such privileges to others. If the members of a Church, or a religious or a semi-religious organization of any kind, arises in America calling for special privileges, be the shame of un-Americanism their portion. Such a contention never will be the disgrace of Catholicism. The common law of the land Catholics propose for themselves; it is what they propose for others.

Catholic fellow-citizens, claim your rights—the rights given by the Constitution of the land, the American spirit of fair play, the laws of American citizenship. But in doing this be on your guard, lest even in slightest semblance you give offence to men too ready to take offence. Be sure before you act that reason and justice are with you. Act always in calmness, certain always that, upon proper presentation of your case, sooner or later America will deal rightly with you. Remember that your complaint is not against the American people, but against individuals, or small classes of men, who, whatever their nominal Americanism, are beyond its sweetest whisperings, below its rapturous elevation of thought and sentiment.

Of the American people this must be said—I say it from my heart, in full knowledge—a people more deeply penetrated with the sense of civic and political justice, more generous in concession of rights, where rights belong, more respectful of their every brother, their every fellow-citizen, is not in existence on the broad surface of the globe. This my tribute to the American people, the verdict my fifty years of private and public commingling compel me to pronounce.

Good citizenship is the need of America, the basis of its safety, the spring of its hopes. It is the imperious law of Catholicism. I say the law of Catholicism—the law, consequently, of all who live in spirit, who obey its mandates. Those who bear the name of Catholic, but are faithless to the injunctions of their religion I disown. They are bad citizens despite their creed, which with all the forces innate in it makes for good citizenship. To the Catholic obedience to law is a religious obligation, binding in God's name, the conscience of the citizen.

"Let every soul be subject to higher powers; for there is no power but from God; and those that are, are ordained of God. Therefore, he that resisteth the power resisteth the ordinance of God. And they that resist purchase to themselves damnation."

I do not discuss the hypothesis of laws wrong in morals, clearly beyond the province of the civil power, violations of the rights of the personal conscience. Such laws were not ratified by the supreme master of righteousness. Personal conscience is the ultimate asylum of the soul, in presence of civil or of ecclesiastical authority. Both Americanism and Catholicism bow to the sway of personal conscience.

It is Americanism that the ballot box is the sanctuary of good citizenship—opening its doors only to the weal and honor of the country. A sacrilege it is to step towards it with bribe in hand, fraud in mind, to reach towards it the offering of selfishness, or of injustice. None more careful of the unstained ballot box than the good Catholic, loyal to the Catholic faith; America is the sole issue before him—its weal for honor. Aught else in mind or in heart, he is a traitor to his creed, as he is a traitor to his country.

The best men for the office, whatever the religious creed of the man. To put a Catholic into office, merely because he is a Catholic, though otherwise unworthy and incapable, is a crime against America, a sin against the Almighty God.

In choosing his candidate the Catholic voter is the freest of the free. It is a calumny that we deeply resent, to say that in civic and political matters Catholic voters are under the influence of the Church. Priests and bishops do not dictate the politics of Catholics; if they strove to do so their interference would be promptly repulsed. It is of public knowledge that the Catholic vote is distributed among the several political parties of the country. To speak of myself, privately and publicly as a citizen, I give my allegiance to a particular political party. Do I dare preach from my pulpit the tenets of that party to the discredit of another? Do I dare allow that, if heeded at all by others, my choice of a ballot should or could receive other attention than that due to its civic and political merit? As a matter of fact legions of Catholic voters in America believe me hopelessly

wrong in politics. As a citizen I may regret that my political influence is not wider; as a Catholic I am glad of the independence of the citizenship of America.

There is in America no Catholic political party, nor should there be. As a matter of course, were a special issue raised in which rights of Catholics were menaced the conscience of Catholics were impelled to defend those rights on the ground of American fair play itself. That—and nothing more.

Now and then I myself have made the complaint that in America, Catholics are not represented in the higher offices of the land proportionately to their numbers. My words were interpreted as if I had urged Catholics to take political control of State and Nation in the interest of the Catholic Church. Nothing is further from my mind. My sole contention is that, seemingly, Catholics are lacking in legitimate civic ambition, or in high civic qualifications, else their fellow-Americans would have been more willing to honor them. Is this position not squarely American—equal rights to all, provided the merit be equal? I repeat the lesson to Catholics who now hear or may later hear my words. For your own sake, for the sake of America, upward be your march in social and political ambition, in ability to render service to the country, in moral worthiness, in intellectual culture; then trust yourselves to the social and political justice of your fellow-Americans. Some Catholics there are who complain that hostility to their religion keeps them in the dark vale, while too often the fact is that their own shortcomings forbid them to ascend to the sunlit hills.

Either they have not fitted themselves for high positions, or they have been without the legitimate ambition to honor themselves by giving to the country highest and best service. I have said, trust to the justice of fair play of your fellow-citizens. Should, however, the particular case arise where it is plain you are set aside solely because you are Catholics, then, in the name of Americanism, protest—so loudly that never again will similar insult be offered to your American citizenship.

I have told of the American Catholic in time of peace. Shall I tell of him in time of war? Here I proffer no argument; I relate a historic occurrence. It was at Gettysburg, fifty years

ago the second day of July, 1863. The command is hurried to the Irish Brigade to check the onrush of General Anderson's Confederates. The chaplain, the Rev. William Corby, leaps to the top of a large boulder: "The Catholic Church," he shouts, "refuses Christian burial to the soldier who turns his back to the foe or deserts his flag," adding that he is ready to impart sacramental absolution to those who in their hearts make a sincere act of sorrow for sin. All are on their knees; General Hancock in his saddle, removes his hat; the absolution is given; the charge is made; the Confederates flee backwards.

Gettysburg is but one of a hundred instances my tongue could easily name. Somehow, Catholicism and Americanism commingle graciously their intertwinings when the honor of the Star-Spangled Banner is in peril.

As a religion Catholicism is in the arena, with the spiritual arms forged by its founder—faith, hope, and charity. It is avowedly expansive and propagandist. What else, so long as the divine commission read: "Going, therefore, teach ye all nations."

Is America to be Catholic in religion? Fain would I have it so. I am not, however, so ignorant of history and of present conditions as to imagine that the goal is within near reach. But Catholicism in America, all consideration given to ebb and flow, is growing apace. I will not deem myself in error when I estimate the Catholic population of the United States to be 18,000,000, to which figure are to be added nearly ten other millions, if we number all whom to-day the flag owns or protects.

Need America fear the spread of the religious creed of Catholicism? In reality the question is none other than this: Need America fear the spread of the Gospel of Christ? If the Catholic Church wins in the battle with unbelief, or with the present varied forms of Christianity, it will only be because it demonstrates in itself the perpetuity of the Kingdom of Christ, to which solely it makes its appeal. Its doctrines, its life and action, must be those of Christ, else, as it should do, it vanishes from the scene. Argument in opposition to its claim as the religion of Christ, it calmly awaits. Of arguments it does not complain. It only asks that passion be absent from the contest, that cal-

umny and misrepresentation be not made use of—promising on its part that whatever on this score the tactics of offence other than those of truth and charity—the methods of the Lord Himself. The work of expansion, as done by the Catholic Church, will be the work of peace and of love. No social discord can come from it—no break in the harmony that should sweeten the ties binding together fellow-citizens and neighbors in the common service of a common country.

To the civil and political institutions of America no harm can come from the spread of Catholicism. Yea—to those institutions Catholicism brings elements most vital to their life and growth —those of a positive, authoritative religion. Never does materialism beget or sustain a well-ordered social organism; never does a vague uncertain Christian sentiment give to it strength and cohesiveness. The Catholic Church puts forth a clear and definite message; it speaks with authority. In its dogmas and enactments it is thoroughly social, laying supreme stress on the principles of law and order, so necessary to society, especially in a free democracy. It teaches that disobedience to law is a sin against God; that society is from God; that to undermine the foundations of society, to make null its purposes and mission, is to resist the ordinance of God. It teaches the sanctity and the indissolubility of marriage, setting its whole power in restraint of that terrible plague of divorce, so ruinous to-day of the family hearthstone, the fundamental unit of the whole social organism.

And it teaches, most firmly and most imperiously, those principles of moral righteousness, that repress passion and self-interest, the fatal foes of the social organism; and it teaches, also, as the final outcome of earth's strugglings, the inspiring doctrine of hope in another life which alone dispels the pessimism of despair, the ferocious thoughts and acts to which this pessimism must needs give birth. To-day—blind they are who do not see the awful peril—society is close to precipice and abyss. The cause is the decay of religion. Salvation for the social organism is in the name and the power of the ever living God, the potent agency to preach God and uphold His authority in the Catholic Church.

I repeat my profession of faith—my religious faith, Catholicism; my civil and political faith, Americanism.

Some twenty years ago, on a memorable occasion, an illustrious prelate, at that time the official representative of Pope Leo XIII, said to the Catholics of America: "The Gospel of Christ in one hand, the Constitution of the United States in the other, go forth to work and to victory." Our signal of combat! It is the word of Francis Satolli: It is Catholicism and Americanism.

16. PATRIOTISM[1]

By Most Rev. John Lancaster Spalding, D.D.

. . . There is a higher love than love of country,—the love of truth, the love of justice, the love of righteousness; and he alone is a patriot who is willing to suffer obloquy and the loss of money and friends, rather than betray the cause of truth, justice, and righteousness, for only by being faithful to this can he rightly serve his country. Moral causes govern the standing and the falling of States as of individuals; and conquering armies move forward in vain, in vain the fleeting fabric of trade is spread, if a moral taint within slowly moulder all. The national life is at fault if it be not in harmony with the eternal principles on which all right human life rests. The greatest and the noblest men when they meet rise into regions where all merely national distinctions are forgotten and transcended. In studying the works of a philosopher, a poet, or a man of science, we give little heed to what country he was born and lived in, so eager are we to learn the truth and beauty he reveals, —truth and beauty, which are of no country, which are wide and all-embracing as the universe. In the presence of heroic virtue also, the national limitations disappear, that the godlike man, who belongs to all countries and ages, may stand forth in his proper light. A man supremely endowed narrows his mind when he is less than universally human. What he says and does should make laws for all,—those diviner laws which have their sanction in the common sense which makes the whole world akin.

[1] Excerpts from an address delivered at the Crève-Coeur Club banquet, Peoria, February 22, 1899. Reprinted through the kindness of A. C. McClurg & Co., from the volume entitled "Opportunity and Other Essays."

Patriotism as understood by the ancients is but a partial virtue. When it is most intense, it is most narrow and intolerant. In Jerusalem, in Athens, in Rome, the city was the fatherland. It was the thought of Zion, and of "Siloa's brook that flowed fast by the oracle of God"; of the Acropolis, with its marvelous setting in the midst of the Attic plain; of the world-mother, looking from her seven hills on the Tiber's tawny wave,—that made the exiles waste away with repinings for home; and their passionate devotion to their country was rarely separable from a hatred of the foreign nature. Whoever was not a citizen was an enemy or a slave; the captive foe was treated with pitiless cruelty, and the slave had no rights.

We are separated from those ancient patriots less by the long lapse of time which has intervened than by the difference of spirit in which we look upon and love our country. For us the man is more than the citizen, humanity more sacred than nationality. To lead a man's life, one must live for some one or some thing other than self. As we can see ourselves only in what is other, so we can find and love ourselves only in what is other than ourselves. To escape from the starved condition of the isolated, the individual is impelled to identify himself with larger unities,—with the family, with the State, with mankind, with God.

Now, for the ancients the State was the ultimate unity in which a man could find and feel himself. Hence their aims and sympathies were partial and narrow. Their patriotism was more intense, but it was less rational, less moral, and therefore less enduring and less beneficent than ours. It was not possible for them to identify themselves with the race, to recognize that all men are made of one blood, and that whenever one suffers injustice, wrong is done to all. But for us nationality has ceased to be the limit of individual sympathy, and the oppression of peoples, however remote, often affects us as though we ourselves had been injured; while noble words and heroic deeds, wherever and by whomever spoken and done, fill us with enthusiasm and gratitude.

Many causes, of which the Christian religion is the deepest and most far-reaching, have led to the wider views and more

generous appreciativeness of modern men. In looking to the one heavenly Father, they are drawn together and held by ties consecrated by faith and approved by reason. Science, which deals with laws that are universal, that act alike upon the farthest star and the grain of sand at our feet, on the race as on individuals, promotes this catholicity of feeling and interest. Our machinery, too, in bringing the ends of the world together, facilitates the intercourse of the peoples of the earth and thereby weakens their immemorial prejudices and hatreds. The commercial interdependence of the nations has a like tendency; while the constantly increasing influence of woman makes for larger sympathy and love. No great movement can now long remain within the boundaries of the nation in which it originates. The questions of education, of labor, of the rights of woman rouse attention and discussion in every civilized country. A new discovery or invention is at once heralded from land to land. The telegraph and the printing-press mediate a rapid and continuous interchange of thought throughout the world, and thus help to make us all, in a way never before possible, citizens of the world.

At the present moment America, if simple truth may be uttered without incurring the suspicion of conceit, represents the general tendency and sentiment of the modern age more than any other country. Here the national feeling is larger and more hospitable than anywhere else; here men of all tongues and races more easily find themselves at home than anywhere else. No other country is so attractive, no other affords in such fulness opportunity for self-activity in every sphere of endeavor, no other insures such complete civil and religious liberty. Nowhere else is there so much freedom from abuses which, because they are inveterate, seem to be sacred; nowhere else is there so much good will, so much readiness to help, so much general intelligence, such sanguine faith in the ability of an enlightened and religious people, who govern themselves, to overcome all obstacles and to find a remedy for whatever mishaps or evils may befall them. Here too, more than elsewhere possibly, men feel that there is a higher love than the love of country, that the citizen can serve his country rightly only when he holds

himself in vital communion with the eternal principles on which human life rests, and by which it is nourished.

The American's loyalty to his country is first of all loyalty to truth, to justice, to humanity. He feels that its institutions can be enduring only when they are founded on religion and morality. He is less inspired by the fortune of the Republic, its material advantages and possibilities, than by its spiritual significance and destiny. He is, indeed, filled with a sense of gladness when he beholds it stretch from ocean to ocean, from the Lakes to the Gulf; when he sees the northern pine salute the southern palm as a fellow-citizen; when he looks on its prairies teeming with harvests sufficient to feed the world, on its mountains and plains filled with silver and gold, with iron and copper, with coal and oil.

But he is less impressed by this geographical and material greatness and splendor than by the intellectual and moral conditions which America presents. Nature is fruitful in vain where man is contemptible. The palace makes ridiculous the occupant who is a beggar in mind and spirit. To no purpose is the country great, if the men are small. Life is more than life's circumstance, man more than his environment. The American patriot, then, more than others seeks grounds for his love of country chiefly in the world of man's higher being. For him freedom, knowledge, truth, justice, good will, humanity, are the essential needs; and it is a little thing that America offers facilities for satisfying the physical and material wants, if here the soul is starved.

Democracy itself is not an end, but a means. The end is a nobler, wiser, stronger, more beneficent kind of man and woman. How shall such men and women be formed except by opportunity,—opportunity for all of worship, of education, of culture, of work that strengthens and purifies, while it creates material comfort and independence? If a nobler race is to spring forth in this new world, all the influences that are active and potent in the national life must conspire to form public opinion, by which in the end we are all ruled,—a public opinion which shall be favorable to pure religion, to the best education, and to sound morality. The better kind, however otherwise they may dis-

agree, must unite and support one another in ceaseless efforts to create such a public opinion. They must not merely lead loyal, brave, chaste, and helpful lives, but they must so live that the atmosphere in which they move shall receive from them a magnetic quality,—the power to stimulate all who breathe it to nobler thoughts and loves, to a deeper and more tender solicitude for the rights and needs of all men, of women and children, of the sick and forsaken, of the criminal and captive.

Goethe, who never utters a foolish thing, says that in time of peace patriotism properly consists merely in this,—that each one sweep before his own door, attend to his own business, learn his own lesson, that it may be well in his own household; and what he says, if but partial, is nevertheless essential truth. He himself, indeed, even in times of war and disaster for the fatherland, seemed to act on this principle, and he has consequently been accused by some of his own countrymen of a lack of patriotism, though in fact he did more to make possible the political union of Germany than any other man; for he more than any other awakened the self-consciousness of the German people and thus inspired them with a more intense longing for national unity.

A good patriot is first of all a good man,—true to himself and true to his relations to his fellowmen. If false to himself, he is false to all. If he love not rightly his father and mother, his wife and child, the neighbor who dwells beside him, how shall he rightly love his country? If he respect not the dignity of human nature in himself, but degrade it by drunkenness or lying or sensuality or dishonesty, how shall he feel a genuine and generous interest in the common weal, and earnestly strive to do his part in correcting the evils and abuses which impair or threaten the national life and prosperity? It will, indeed, be easy for him to make his patriotism a theme for declamation, and easy, too to throw suspicion on the loyalty of others; but if he is not a real man, it is not possible that he should be a real lover of his country.

Whoever deliberately wrongs an American, wrongs America. The worst enemy of the country is not the drunkard, but the buyer of votes, whether at the polls or in council chambers or in

legislative halls; not the petty thief, but the capitalist whose insatiate greed urges him on to crush all competitors; not the selfish man who cares not at all for the general good, but the politician who makes his patriotism a cloak to cover him while he sneaks into public office which he prostitutes to private gain; not he who refuses his assent to measures, however popular, unless he can give it honestly, but the demagogue who is ever ready to run and cry with the crowd; not the ranting anarchist, but the editor who for money impugns the known truth. But the beef embalmer has attained the highest point of treacherous infamy, beyond which it is not possible to go,—he poisons the wells, not to destroy the enemy, but the soldiers who fight their country's battles. The saloon is bad; the worst evil, however, resulting from it is not drunkenness, but political corruption; for if just laws were rightly administered, the saloon would cease to be a source of degradation and ruin.

Our civilization is still incomplete; it is, as Emerson says, "a wild democracy; the riot of mediocrities and dishonesties and fudges." If numbers were enough, if wealth were enough, if machinery were enough, to constitute a great people, for us the question would be settled, but the kind of man, not numbers or wealth or machinery, is what we have to consider, and it is a favorable omen that we are not self-complacent, that our defects and faults are not hidden from us. We suffer from the absence of the discipline of respect, from a certain hardness and materialism, from a fondness for exaggeration, and from boastfulness. The fear of demos and the demagogue prevents us from speaking the simple and salutary language of truth when far-reaching and vital issues are in question.

We are so accustomed to bow to the will of majorities that we easily forget that votes count for nothing when we have to consider what is true and wise and just. Here there is every likelihood that the minority is right and the majority wrong. The multitude everywhere and in all ages are dominated by the present. They are unwilling to wait, unwilling to deny themselves now that they may become capable of higher things hereafter. The success of a day robs them of the glory of a lifetime. They are fickle because, since they see only what is im-

mediately before them, their opinions change as the road turns. They are selfish because they are shortsighted and but feebly influenced by large ideas and generous aims. Being a crowd, they are easily hypnotized, and are quickly hurried from one extreme to another. They follow the cry of chance leaders, and, being little able to think for themselves, they resent independence of thought in those things precisely in which such thought is most needed; for in the deepest and most critical questions concerning the national life and policy what is popular is rarely what is most wise. The voice of the most serious minds is not only not heeded, it is drowned in the clamor and vituperation of those who are themselves led by men who know little, and who have at heart chiefly their own popularity and profit. A false opinion is created, and we are commanded to accept it without question as the will of the people; and our highest officials, when they yield to the outcry of the mob, are commended for their wisdom and patriotism. Our best minds do not guide us; our best men do not govern us.

By faithful adherence to the principles with which our national life began, we have grown to be a prosperous and mighty people. We have been taught to cherish these principles as being scarcely less sacred than our religion. Our climate is healthful, our soil fertile, our territory large as all Europe. Our industry, intelligence, and mechanical skill have in the brief space of a century made us the richest of the nations, while the growth of our population has been phenomenal. If success is an argument for continuing in a given line of policy and conduct, no people ever had so good a reason for following in the old way. Our success has been marvelous, but, after all, it is still only the success of an experiment. It has not yet been proved that a stable and enduring civilization can be built on a democracy such as ours. We occupy a continent stretching east and west, and south, for thousands of miles. It is not easy to reconcile the interests of regions lying so remote from one another. Our population is composed not only of intergeneous elements from Europe, but also of a large and increasing and but partially assimilated body of Africans.

While our material progress has been great, our love of prin-

ciple and our strength of moral conviction seem to have grown feebler. More and more we are dominated by greed; more and more we become reckless of the means by which money is obtained. Vast fortunes are quickly heaped up, but those who toil are little benefited. Our political and commercial life is undermined by dishonesty, and we are becoming so callous or so reckless that abuses which endanger our very existence as a nation give us little concern. . . .

Here, at our hands, lies the task God sets us. It is the development of our inner life, the enriching of our minds, the purification of our hearts, the education of ourselves through liberty and labor, the reform of our politics, the rooting out of cant, lying, vulgarity, greed, and dishonesty, of drunkenness and lust; the correcting of our extravagant estimate of the value of what is merely matter of life's accompaniments as distinguished from life itself, which is thought and love, strength and courage, patience and forbearance. We have to learn that what makes a millionaire spoils a man; that a people who think trade and commerce the one thing needful have no permanent place in history, because they have no influence on the spiritual, which is the real life of man. The people who are the bearers of the largest thought, the deepest love, the holiest faith, live and work forever in the race, while merchants and traders perish and are forgotten, like the wares they deal in. See how quickly elated and how quickly cast down are they whose hope is in riches,—for riches are akin to fear, to change and death; while they who live for truth and righteousness move forward, serene and unafraid, upborne by the unseen powers; for truth and righteousness are life. Beggars and outcasts, if but some divine thought or immortal hope upwelled within, have survived the fall of empires, the ruin of civilizations, and the utter vanishment of the people from whom they sprang. We have to learn to know how to be happy and noble, for, as Ruskin says, till we have learned how to be happy and noble, we have not much to tell, even to Red Indians; and he goes on: "To watch the corn grow, and the blossoms set; to draw hard breath over ploughshare or spade; to read, to think, to love, to hope, to pray,—these are the things that make men happy. . . . The world's prosperity

or adversity depends upon our knowing and teaching these few things; but upon iron or glass or electricity or steam, in no wise."

The Absolute, the Highest, is a Person, and the civilization which issues in the noblest personalities is the best. By them we estimate the worth of our nature, by them the value of our political and religious institutions. But noble men and women do not spring forth in isolation. As an individual, man is insignificant; in fact, he cannot become human at all, except in a social environment,—in a medium in which he is made partaker of the life of the race, receiving the thoughts, hopes, and beliefs, the aims, aspirations, and ideals, which are the food of the spirit of man, of that which places him in opposition to nature and lifts him above its fatal laws. It is the patriot's business to strengthen and purify the institutions by which the citizen is educated,—the family, the Church, the State. To whom the life of the home is not sacred, nothing is sacred. The child that does not drink pure love and religion from this fountain-head can never be rightly educated. It is in vain that we build churches and schools, if the home does not fill them with teachable hearts and minds. It is here that each one receives his better self,—the self which makes him conscious that he is a center toward which infinities converge, where truth and justice and love are felt to be the real and permanent good. What burns in the hearts of the fathers will glow in the breasts of the children. Patriotism, like charity, begins at home. It is not a philosophy; it is a sentiment, inspired, above all, by the mothers of a people, from whom also we receive religion and morality. Washington calls these the indispensable supports of political prosperity, and therefore he refuses to give the title of patriot to those who "labor to subvert these great pillars of human happiness, these firmest props of the duties of men and citizens."

The end of all worthy struggles is to establish morality as the basis of individual and national life, and morality can be firmly founded only on pure religion. To make righteousness prevail, to make justice reign; to spread beauty, gentleness, wisdom, and peace; to widen opportunity, to increase good will, to move in

the light of higher thoughts and larger hopes, to encourage science and art, to foster industry and thrift, education and culture, reverence and obedience, purity and love, honesty, sobriety, and the disinterested devotion to the common good,—this is the patriot's aim, this his ideal. And if even a minority, a remnant, work in this spirit and strive with this purpose, the star of the Republic, which rose to herald the dawn of a new and better era, shall not throw its parting rays on the ruins of an empire stained with blood.

17. ENCYCLICAL ON INTERNATIONAL RECONCILIATION

By Pope Benedict XV

Peace, the great gift of God, than which, in St. Augustine's words, there is no happier thing among men, nothing more desirable or better; peace, which all good people have implored for more than four years, with the prayers of the faithful and the tears of mothers, has finally begun to shine among the peoples, and We are among the first to rejoice at it. But still too many and too bitter anxieties disturb this Our paternal joy, for if almost everywhere the war has in a way come to an end, and several treaties of peace have been signed, nevertheless the germs of old bitterness remain and you know well, Venerable Brethren, that no peace can have consistency, no alliance can have strength, though elaborated in daily laborious conferences and solemnly sanctioned, if at the same time hatreds and enmities are not quenched by means of a reconciliation based on mutual charity.

It is on this consideration, which is full of anxiety and dangers, that We wish to dwell, Venerable Brethren, that at the same time the peoples entrusted to your care may have it brought home to them.

In truth, ever since by the hidden designs of God We were raised to the See of Peter, we have never ceased to do everything in Our power, from the very beginning of the war, that all the nations of the world might resume cordial relations among themselves. To that end We never ceased to pray, to repeat exhortations, to propose ways of arrangement, to try every means, in fact, to open, by Divine aid, a door of some sort to a peace that might be just, honorable, and lasting; and at the same time We exercised all Our paternal care to alleviate every-

where that terrible load of sorrow and disaster of every sort accompanying the immense tragedy.

And now, just as from the beginning of Our troubled Pontificate, the charity of Jesus Christ led Us to work both for the return of peace and to alleviate the horrors of the war, so now that a certain peace has been finally concluded, it is this same charity which urges Us to exhort all the children of the Church, or better, all men in the world, that they may put aside the old bitterness and give place to mutual love and concord.

There is no need for Us to dwell long on showing how humanity is incurring the risk of terrible disasters if, while peace indeed is concluded, latent hostility and enmity among the peoples continue. No need to dwell on the harm to all that is fruit of civilization and progress, to commerce and industry, literature and the arts, all of which flourish only when the peoples live together in tranquillity.

But more important still—grave harm would be done to the very life of Christianity, which is essentially based on charity, being called the very preaching of the law of Christ, "the Gospel of peace."

Indeed, as you well know and as We have often called to mind, nothing was so often and so insistently taught by the Divine Master to His disciples as this precept of fraternal charity as the one which includes all the others in itself; and Our Lord called that precept new and His own, desiring that it should be as the hall mark of the Christians by which they might easily be distinguished from all others.

No other, indeed, was the testament that He left to His followers when He died, praying them to love one another, and loving one another try to imitate the ineffable unity that exists between the Persons of the Holy Trinity: "That they may be one as we also are one that they be made perfect in one."

And the Apostles, following the order of the Divine Master and taught by His very voice, were unceasing in their exhortation to the faithful: "But before all things have a constant mutual charity among yourselves"; "And above all these things have charity which is the bond of perfection"; "Dearly beloved, let us love one another for charity is of God."

The teaching of Jesus Christ and of the Apostles was faithfully observed by Our brethren of the old times who belonged indeed to different nations, often at war among themselves, but who nevertheless wiped out the record of past differences in voluntary oblivion and lived in perfect concord.

And indeed there was marked contrast between such intimate union of minds and hearts and the deadly hostilities that then broke out among the nations.

What has already been said to teach the precept of charity holds good for the pardoning of offenses, no less solemnly commanded by the Lord: "But I say to you, love your enemies; do good to them that hate you, and pray for them that persecute and calumniate you, that you may be the children of your Father who is in Heaven, who maketh His sun to rise upon the good and bad." Hence that terribly severe warning of the Apostle St. John: "Whosoever hateth his brother is a murderer and you know that no murderer hath eternal life abiding in himself."

Finally, Jesus Christ has taught us to pray the Lord so that we ask for forgiveness on condition of forgiving others: "And forgive us our debts as we also forgive our debtors." And if sometimes the observance of this law seems too severe and difficult, the Redeemer of the human race Himself assists us not only with the Divine Grace but also by His admirable example, for as He hung on the cross He prayed pardon of His Father for those who so unjustly and wickedly tortured Him: "Father, forgive them, for they know not what they do."

We too should be the first to imitate the pity and loving kindness of Jesus Christ, whose Vicar We are here, though without any merit of Our own; with all Our heart, following His example, We forgive all and every one of Our enemies who knowingly or unknowingly have heaped and are still heaping on Our person and Our work every sort of vituperation, and We embrace all with supreme charity and benevolence, neglecting no opportunity to do them all the good in Our power; and that is indeed what Christians really worthy of the name are bound to do towards those from whom they have received offenses during the war.

Christian charity in fact is not confined to not hating our enemies and loving them as brothers; it desires also that we do good to them, following the rule of the Divine Master who "went about doing good and healing all that were oppressed by the Devil," and ran the course of His mortal life giving it all up to doing untold good to men, even shedding His blood for them. So said St. John: "In this we have known the charity of God, because He hath laid down His life for us, and we ought to lay down our lives for the brethren. He that hath the substance of this world and shall see his brother in need and shall shut up his bowels from him, how doth the charity of God abide in him? My little children, let us not love in word nor in tongue, but in deed and in truth."

Never indeed was there a time when we should "spread the limits of charity" more than in these days of universal suffering and sorrow; never perhaps as to-day has humanity needed that common beneficence which grows from sincere love of our neighbor and is full of sacrifice and fervor. For if we look anywhere where the fury of the war has passed we see immense regions utterly desolate and squalid; multitudes reduced to such extremes as to be without bread, clothing, and shelter; innumerable widows and orphans awaiting help from someone; and lastly a great crowd of enfeebled beings, particularly infants and children, whose malformed bodies bear witness to the atrocity of the war.

To the mind of anyone who sees this picture of misery by which the human race is oppressed there must come back at once the story of the Gospel traveler who was journeying from Jerusalem to Jericho and fell among thieves who robbed him and covered him with wounds and left him half dead by the wayside. The two cases are very much alike; as to the traveler there came the good Samaritan, full of compassion, who bandaged his wounds, pouring oil and wine over them, took him to the inn and undertook all care of him, and so, to cure the wounds of the human race the hand of Christ Jesus is needed, of whom the Samaritan was figure and image.

That indeed is the work which the Church takes upon itself as heir and guardian of the spirit of Jesus Christ—the Church

whose entire existence is a marvelously varied network of good deeds, the Church "that real mother of Christians which has such tenderness of love for its neighbor that for every one of the different evils which trouble the soul with sin it has ready every kind of medicine" and so "treats and guides children as children, young men with courage and strength, old people with quiet calm, as each has his condition not only in body but in soul." And all this many-sided Christian beneficence, by sweetening the spirit, has wonderful effect in restoring tranquillity to the peoples.

Therefore We pray you, Venerable Brethren, and We exhort you in the bowels of charity of Jesus Christ, do everything in your power, not only to urge the faithful entrusted to you to lay aside hatred and pardon offenses, but also to promote more actively all those works of Christian benevolence which bring aid to the needy, comfort to the afflicted, protection to the weak, opportune assistance, in fact, of every kind to all who have suffered most gravely through the war. We wish that you should specially exhort your priests, as ministers of peace, to be assiduous in this work, which is indeed the very compendium of the Christian life, in preaching love towards one's neighbors, even if enemies, and being "all things to all men." So as to afford a shining example, let them wage war everywhere on enmity and hatred, knowing well that in doing so they are doing a thing very welcome to the most loving Heart of Jesus and to him who, however unworthy, is His Vicar here on earth. And in this connection also they should exhort and pray Catholic journalists and writers in that "as elect of God, holy and beloved," they may clothe themselves in "the bowels of mercy and benignity," expressing it in their writings, abstaining not only from false and empty accusations but also from all intemperance and bitterness of language which is contrary to the law of Christ and does no more than reopen sores as yet unhealed, especially in that men who are suffering bitterly from recent wounds find it difficult to endure even the lightest injury.

All that We have said here to individuals about their duty of practicing charity We wish to apply also to those peoples who

have fought the great war, in order that, when every cause of disagreement has been removed as far as possible, and saving of course reasons of justice, they may resume friendly relations among themselves. For the Evangelic law of charity is the same between individuals as between States and Nations, which are indeed but collections of individuals. From the moment that the war ended, both from motives of charity and also through a certain necessity of things, there has begun a universal drawing together of the peoples, moved to unite by their mutual needs as well as by reciprocal benevolence, which is more marked now that civilization is so extended and means of communication so marvelously increased.

Truly, as We have already said, this Apostolic See has never wearied of teaching during the war such pardon of offenses and the fraternal reconciliation of the peoples, in conformity with the most holy law of Jesus Christ and in agreement with the needs of humanity; nor did it allow that these moral principles should be forgotten, even in the clash of dissension and hatred. And now, after the treaties of peace, it puts forward these principles and proclaims them even more strongly, as indeed it did a short time ago in the letter to the Bishops of Germany and in the letter addressed to the Archbishop of Paris. And inasmuch as one very useful means of maintaining and increasing this concord among the peoples is found in the visits which the heads of States and Governments are accustomed to exchange to consult on matters of special importance, considering the changed circumstances of the times and the dangerous trend of events, in order to co-operate in this brotherhood of the peoples We are willing to mitigate in some measure the severity of the conditions which were justly laid down by Our predecessors, when the civil power of the Holy See was destroyed, to exclude visits to Rome of Catholic Princes in official form.

But at the same time We solemnly proclaim that this concession, determined, or rather willed, as is seen, on account of the seriousness of the present times, must not be interpreted as a tacit renunciation of sacrosanct rights as if the Holy See were satisfied with the abnormal condition in which it is now placed. Indeed the protests which Our predecessors have

several times made, not in the least moved thereto by human interests but by the sanctity of duty, to defend the dignity and rights of this Apostolic See, We on this occasion renew for the very same reasons, claiming once again and with even greater insistence that now that peace is made among the nations "for the Head of the Church too an end may be put to that abnormal condition which does serious harm, for many reasons, to that very tranquillity of the peoples."

Things being thus restored in the order desired by justice and charity, and the peoples reconciled among themselves, it would be truly desirable, Venerable Brethren, that all States should put aside mutual suspicion and unite in one sole society or rather family of peoples, both to guarantee their own independence and safeguard order in the civil concert of the peoples. A special reason, not to mention others, for forming this society among the nations, is the need generally recognized of reducing, if it is not possible to abolish it entirely, the enormous military expenditure which can no longer be borne by the States, in order that in this way murderous and disastrous wars may be prevented and to each people may be assured, in the just confines, the independence and integrity of its own territory.

And once this League among the nations is founded on the Christian law in all that regards justice and charity, the Church will surely not refuse it valid aid, inasmuch as being itself the most perfect type of universal society; through its very essence and its aims it has wonderful power for bringing this brotherhood among men, not only for their eternal salvation but also for their material well-being; it leads them, that is, through temporal happiness so as not to lose the eternal. Indeed we know from history that when the spirit of the Church pervaded the ancient and barbarous nations of Europe, little by little the many and varied differences that divided them disappeared; in time they joined together in a homogeneous society from which originated modern Europe, under the guidance and auspices of the Church, while it preserved for each nation its own characteristics culminated in a compact unity bringing prosperity and greatness. Well does St. Augustine say in this regard: "This celestial city, while in exile here on earth, calls to itself citizens of every

nation and forms out of all the peoples one sole pilgrim society; no thought is had of differences in customs, laws, and institutions; everything which tends to the conquest and maintenance of peace on earth the Church, far from repudiating and destroying, jealously preserves; for however these things may vary among the nations, they are all directed to the same end of peace on earth as long as they do not hinder the exercise of the religion which teaches adoration of the one supreme true God."

And the same holy teacher thus spoke to the Church: "Citizens, peoples, and all men, recalling their common origin thou shalt not only unite among themselves but shalt make them brothers."

We meanwhile, coming back to what we said at the beginning, turn affectionately to all our children and conjure them in the name of Our Lord Jesus Christ to forget mutual differences and offenses and draw together in the embrace of Christian charity before which there are no strangers; and we fervently exhort, too, all the nations that under the influence of Christian benevolence they establish a true peace among themselves and join together in one single alliance which, under the auspices of justice, will be lasting; and finally we appeal to all the men and all the peoples of the earth to adhere in mind and heart to the Catholic Church and through the Church to Christ the Redeemer of the human race, so that we may address to them in very truth the words of St. Paul to the Ephesians: "But now in Christ Jesus you who sometime were afar off are made nigh by the Blood of Christ. For He is our peace who hath made both one, and breaking down the middle wall of partition . . . killing the enmities in Himself. And coming he preached peace to you that were afar off and peace to them that were nigh."

Nor less appropriate are the words which the same Apostle addressed to the Colossians: "Lie not one to another: stripping yourselves of the old man with his deeds and putting on the new, him who is renewed unto knowledge according to the image of Him who created him. Where there is neither Gentile nor

Jew, circumcision nor uncircumcision, Barbarian nor Scythian, bond nor free. But Christ is all in all."

Meanwhile, trusting in the protection of the Virgin Immaculate who not long ago We directed should be universally invoked as "Queen of Peace," as also in that of the three new Saints, We humbly implore the Divine Spirit the Paraclete that He may "graciously grant to the Church the gift of unity and peace" and with even further outpouring of charity for the common salvation may renew the face of the earth. As harbinger of these celestial gifts and as pledge of Our paternal benevolence, We impart with all Our heart to you, Venerable Brethren, to all your clergy and people, the Apostolic Benediction.

Given in Rome at St. Peter's the 23d day of May, the solemnity of Pentecost 1920, the sixth year of Our Pontificate.

18. NATIONAL AND INTERNATIONAL RELATIONS

Extracts from the Pastoral Letter of the American Hierarchy, February, 1920.

National Conditions

Our country had its origin in a struggle for liberty. Once established as an independent Republic, it became the refuge of those who preferred freedom in America to the conditions prevailing in their native lands. Differing widely in culture, belief, and capacity for self-government, they had as their common characteristics the desire for liberty and the pursuit of happiness. Within a century, those diverse elements had been formed together into a nation, powerful, prosperous, and contented. As they advanced in fortune, they broadened in generosity; and to-day, the children of those early refugees are restoring the breath of life to the peoples of Europe.

These facts naturally inspire us with an honest pride in our country, with loyalty to our free institutions and confidence in our future. They should also inspire us with gratitude to the Giver of all good gifts, who has dealt so favorably with our nation: "He hath not done in like manner to every nation" (Ps. cxlvii). Our forefathers realized this, and accordingly there is evident in the foundation of the Republic and its first institutions, a deep religious spirit. It pervades the home, establishes seats of learning, guides the deliberation of law-making bodies. Its beneficent results are our inheritance; but to enjoy this and transmit it in its fullness to posterity, we must preserve in the hearts of the people the spirit of reverence for God and His law, which animated the founders of our nation. Without that spirit, there is no true patriotism; for whoever sincerely loves his country, must love it for the things that

make it worthy of the blessings it has received and of those for which it may hope through God's dispensation.

We are convinced that our Catholic people and all our citizens will display an equally patriotic spirit in approaching the tasks which now confront us. The tasks of peace, though less spectacular in their accomplishment than those of war, are not less important and surely not less difficult. They call for wise deliberation, for self-restraint, for promptness in emergency and energy in action. They demand, especially, that our people should rise above all minor considerations and unite their endeavors for the good of the country. At no period in our history, not even at the outbreak of war, has the need of unity been more imperative. There should be neither time nor place for sectional division, for racial hatred, for strife among classes, for purely partisan conflict imperiling the country's welfare. There should be no toleration for movements, agencies, or schemes that aim at fomenting discord on the ground of religious belief. All such attempts, whatever their disguise or pretext, are inimical to the life of our nation. Their ultimate purpose is to bring discredit upon religion, and to eliminate its influence as a factor in shaping the thought or the conduct of our people. We believe that intelligent Americans will understand how foreign to our ideas of freedom and how dangerous to freedom itself, are those designs which would not only invade the rights of conscience but would make the breeding of hatred a conscientious duty.

CARE FOR IMMIGRANTS

Such movements are the more deplorable because they divert attention from matters of public import that really call for improvement, and from problems whose solution requires the earnest co-operation of all our citizens. There is much to be done in behalf of those who, like our forefathers, come from other countries to find a home in America. They need an education that will enable them to understand our system of government and will prepare them for the duties of citizenship. They need warning against the contagion of influences whose evil

results are giving us grave concern. But what they chiefly need is that Christian sympathy which considers in them the possibilities for good rather than the present defects, and, instead of looking upon them with distrust, extends them the hand of charity. Since many of their failings are the consequence of treatment from which they suffered in their homelands, our attitude and action toward them should, for that reason, be all the more sympathetic and helpful.

CLEAN POLITICS

The constant addition of new elements to our population obliges us to greater vigilance with regard to our internal affairs. The power of assimilation is proportioned to the soundness of the organism; and as the most wholesome nutriment may prove injurious in case of functional disorder, so will the influx from other countries be harmful to our national life, unless this be maintained in full vigor. While, then, we are solicitous that those who seek American citizenship should possess or speedily attain the necessary qualifications, it behooves us to see that our political system is healthy. In its primary meaning, politics has for its aim the administration of government in accordance with the express will of the people and for their best interests. This can be accomplished by the adoption of right principles, the choice of worthy candidates for office, the direction of partisan effort toward the nation's true welfare and the purity of election; but not by dishonesty. The idea that politics is exempt from the requirements of morality, is both false and pernicious; it is practically equivalent to the notion that in government there is neither right nor wrong, and that the will of the people is simply an instrument to be used for private advantage.

The expression or application of such views accounts for the tendency, on the part of many of our citizens, to hold aloof from politics. But their abstention will not effect the needed reform, nor will it arouse from their apathy the still larger number who are so intent upon their own pursuits that they have no inclination for political duties. Each citizen should devote a reason-

able amount of time and energy to the maintenance of right government by the exercise of his political rights and privileges. He should understand the issues that are brought before the people, and co-operate with his fellow-citizens in securing, by all legitimate means, the wisest possible solution.

PUBLIC OFFICE AND LEGISLATION

In a special degree, the sense and performance of duty is required of those who are entrusted with public office. They are at once the servants of the people and the bearers of an authority whose original source is none other than God. Integrity on their part, shown by their impartial treatment of all persons and questions, by their righteous administration of public funds and by their strict observance of law, is a vital element in the life of the nation. It is the first and most effectual remedy for the countless ills which invade the body politic and, slowly festering, end in sudden collapse. But to apply the remedy with hope of success, those who are charged with the care of public affairs, should think less of the honor conferred upon them than of the great responsibility. For the public official above all others, there is need to remember the day of accounting, here, perhaps, at the bar of human opinion, but surely hereafter at the judgment seat of Him whose sentence is absolute: "Give an account of thy stewardship" (Luke xvi, 2).

The conduct of one's own life is a serious and often a difficult task. But to establish, by the use of authority, the order of living for the whole people, is a function that demands the clearest perception of right and the utmost fidelity to the principles of justice. If the good of the country is the one true object of all political power, this is pre-eminently true of the legislative power. Since law, as the means of protecting right and preserving order, is essential to the life of the State, justice must inspire legislation, and concern for the public weal must furnish the single motive for enactment. The passing of an unjust law is the suicide of authority.

The efficacy of legislation depends on the wisdom of laws,

not on their number. Fewer enactments, with more prudent consideration of each and more vigorous execution of all, would go far towards bettering our national conditions. But when justice itself is buried under a multiplicity of statutes, it is not surprising that the people grow slack in observance and eventually cease to respect the authority back of the laws. Their tendency then is to assume the function which rightly belongs to public executive power, and this they are more likely to do when aroused by the commission of crimes which, in their opinion, demand swift retribution instead of the slow and uncertain results of legal procedure. The summary punishment visited on certain offences by those who take the law into their own hands, may seem to be what the criminal deserves; in reality, it is a usurpation of power and therefore an attack upon the vital principle of public order. The tardiness of justice is surely an evil, but it will not be removed by added violations of justice, in which passion too often prevails and leads to practices unworthy of a civilized nation.

INTERNATIONAL RELATIONS

Though men are divided into various nationalities by reason of geographical position or historical vicissitude, the progress of civilization facilitates intercourse and, normally, brings about the exchange of good offices between people and people. War, for a time, suspends these friendly relations, but eventually it serves to focus attention upon them and to emphasize the need of readjustment. Having shared in the recent conflict, our country is now engaged with international problems and with the solution of these on a sound and permanent basis. Such a solution, however, can be reached only through the acceptance and application of moral principles. Without these, no form of agreement will avail to establish and maintain the order of the world.

Since God is the Ruler of nations no less than of individuals, His law is supreme over the external relations of States as well as in the internal affairs of each. The sovereignty that makes a nation independent of other nations, does not exempt it from its obligations toward God; nor can any covenant, however

shrewdly arranged, guarantee peace and security, if it disregard the divine commands. These require that in their dealings with one another, nations shall observe both justice and charity. By the former, each nation is bound to respect the existence, integrity and rights of all other nations; by the latter, it is obliged to assist other nations with those acts of beneficence and good will which can be performed without undue inconvenience to itself. From these obligations a nation is not dispensed by reason of its superior civilization, its industrial activity or its commercial enterprise; least of all, by its military power. On the contrary, a State which possesses these advantages, is under a greater responsibility to exert its influence for the maintenance of justice and the diffusion of good will among all peoples. So far as it fulfils its obligation in this respect, a State contributes its share to the peace of the world; it disarms jealousy, removes all ground for suspicion and replaces intrigue with frank co-operation for the general welfare.

The growth of democracy implies that the people shall have a larger share in determining the form, attributions, and policies of the government to which they look for the preservation of order. It should also imply that the calm, deliberate judgment of the people, rather than the aims of the ambitious few, shall decide whether, in case of international disagreement, war be the only solution. Knowing that the burdens of war will fall most heavily on them, the people will be slower in taking aggressive measures, and, with an adequate sense of what charity and justice require, they will refuse to be led or driven into conflict by false report or specious argument. Reluctance of this sort is entirely consistent with firmness for right and zeal for national honor. If it were developed in every people, it would prove a more effectual restraint than any craft of diplomacy or economic prudence. The wisest economy, in fact, would be exercised by making the principles of charity and justice an essential part of education. Instead of planning destruction, intelligence would then discover new methods of binding the nations together; and the good will which is now doing so much to relieve the distress produced by war, would be so strengthened and directed as to prevent the recurrence of international strife.

One of the most effectual means by which States can assist one another, is the organization of international peace. The need of this is more generally felt at the present time when the meaning of war is so plainly before us. In former ages also, the nations realized the necessity of compacts and agreements whereby the peace of the world would be secured. The success of these organized efforts was due, in large measure, to the influence of the Church. The position of the Holy See and the office of the Sovereign Pontiff as Father of Christendom, were recognized by the nations as powerful factors in any undertaking that had for its object the welfare of all. A "Truce of God" was not to be thought of without the Vicar of Christ; and no other truce could be of lasting effect. The Popes have been the chief exponents, both by word and act, of the principles which must underlie any successful agreement of this nature. Again and again they have united the nations of Europe, and history records the great services which they rendered in the field of international arbitration and in the development of international law.

The unbroken tradition of the Papacy with respect to international peace, has been worthily continued to the present by Pope Benedict XV. He not only made all possible efforts to bring the recent war to an end, but was also one of the first advocates of an organization for the preservation of peace. In his Letter to the American people on the last day of the year, 1918, the Holy Father expressed his fervent hope and desire for an international organization, "which by abolishing conscription will reduce armaments, by establishing international tribunals will eliminate or settle disputes, and by placing peace on a solid foundation will guarantee to all independence and equality of rights." These words revealed the heart of the Father whose children are found in every nation, and who grieves at the sight of their fratricidal struggle. That they were not then heeded or even rightly understood, is but another evidence of the degree to which the passions aroused by the conflict had warped the judgment of men. But this did not prevent the Pontiff from intervening in behalf of those who were stricken by the fortunes of war, nor did it lessen his determina-

tion to bring about peace. To him and to his humane endeavor, not Catholics alone, but people of all creeds and nationalities, are indebted for the example of magnanimity which he gave the whole world during the most fateful years of its history.

THE END

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